REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY

No. 30A] NEW DELHI, TUESDAY, AUGUST 16, 1960/SRAVANA 25, 1882

LOK SABHA

The following Report of the Joint Committee on the Bill further to amend the Companies Act, 1956 was presented to Lok Sabha on the 16th August, 1960:—

Composition of the Joint Committee

Lok Sabha

*Sardar Hukam Singh—*Chairman*

MEMBERS

2. Shri H. C. Heda
3. Shri Satyendra Narayan Sinha
4. Pandit Dwarka Nath Tiwary
5. Shri Shivram Rango Rane
6. Shri Radhelal Vyas
7. Shri N. R. M. Swamy
8. Shri P. T. Thanu Pillai
9. Shri M. Shankaraiya
10. Shri Jaganatha Rao
11. Shri Ajit Singh Sarhadi
12. Shri Radheshyam Ramkumar Morarka
13. Shri G. D. Somani
14. Shri Feroze Gandhi
15. Shri C. D. Pande
16. Shri Mulchand Dube
17. Shri Rohanlal Chaturvedi
18. Shri Arun Chandra Guha (chairman from 15th September, 1959 to 21st December, 1959)

*Resigned from the Committee with effect from 5th September, 1959 and was re-appointed to the Committee on the 21st December, 1959.

19. Shrimati Sucheta Kripalani
20 Shri Narendrabhai Nathwani
21. Shri Nityanand Kanungo
22. Shri K. T. K. Tangamani
23. Shri S. Easwara Iyer
24. Shri M. R. Masani
25. Shri Yadav Narayan Jadhav
26. Shri Tridib Kumar Chaudhuri
27. Shri Surendra Mahanty
28. Shri G. K. Manay
29. Shri Naushir Bharucha
30. Shri Lal Bahadur Shastri

Rajya Sabha

31. Shri Khandubhai K. Desai
32. Shri T. S. Avinashilingam Chettiar
33. Shri P. D. Himatsingka
34. Shri Babubhai M. Chinai
35. Shri J. S. Bisht
*36. Shri Akbar Ali Khan
*37. Shri R. S. Doogar
38. Shri Awadheshwar Prasad Sinha
†39. Shri Ram Sahai
40. Shri M. P. Bhargava
†41. Shri Jairamdas Daulatram
†42. Shri Dahyabhai V. Patel
**43. Shri Mulka Govinda Reddy
†44. Shri P. Ramamurti
45. Shri Rohit M. Dave.

DRAFTSMEN

Shri S. P. Sen Verma, *Joint Secretary and Draftsman, Ministry of Law.*

Shri G. R. Bal, *Deputy Draftsman, Ministry of Law.*

Shri P. L. Gupta, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

*Ceased to be members of the Joint Committee consequent on their retirement from Rajya Sabha with effect from the 2nd April, 1960 but were re-appointed by Rajya Sabha on the 14th April, 1960 on their re-election to that House.

†Appointed on the 14th April, 1960 by Rajya Sabha *vice* Dr. R. P. Dube, Shri P. T. Leuva, Shri V. K. Dhage and Shri J. V. K. Vallabhrao, ceased to be members of the Joint Committee on their retirement from that House.

**Appointed on the 25th February, 1960 *vice* Shri H. D. Rajah died.

REPORT OF THE JOINT COMMITTEE

On behalf of the Joint Committee to which the Bill* further to amend the Companies Act, 1956, was referred, I, having been authorised by the Committee, present on their behalf, their report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 1st May, 1959. The motion for reference of the Bill to a Joint Committee of the Houses was moved in the Lok Sabha by Shri Nityanand Kanungo, the Minister of Commerce, on the 6th May, 1959 and was discussed and adopted on the same day.

3. The Rajya Sabha discussed the motion on the 7th and 8th May, 1959 and concurred in the said motion on the 8th May, 1959.

4. The message from the Rajya Sabha was read out to the Lok Sabha on the 9th May, 1959.

5. The Committee held twenty-seven sittings in all.

6. The first sitting of the Committee was held on the 8th May, 1959 to draw up a programme of work. The Committee at this sitting decided to hear evidence from associations, public bodies and individuals desirous of presenting their suggestions or views before the Committee and to issue a press communique inviting memoranda for the purpose. The Chairman was authorised to decide, after examining the memoranda submitted by them, as to which of the associations, public bodies etc. should be called to give oral evidence before the Committee.

7. 64 memoranda/representations on the Bill were received by the Committee from different associations, public bodies and individuals.

8. At their second sitting held on the 6th July, 1959, the Committee had a preliminary discussion. At their third, fourth, fifth, sixth and seventh sittings held on the 7th, 8th, 9th, 10th and 11th July, 1959, respectively, the Committee heard the evidence given by fourteen associations etc.

9. The Committee have decided that the whole of the evidence given before them should be laid on the Table of the House.

*Published in Part II, Section 2 of the Gazette of India, Extraordinary, dated the 1st May, 1959.

10. At their eighth, ninth and tenth sittings held on the 13th, 14th and 15th July, 1959, respectively, the Committee had a general discussion on the important provisions of the Bill.

11. The Committee considered the Bill clause by clause at their sittings held from 14th to 17th October, 1959, 25th and 27th to 29th January, 1960, and 16th and 18th to 21st July, 1960.

12. The report of the Committee was to be presented by the last day of the first week of the Eighth Session of Second Lok Sabha. The Committee were granted four extensions of time; for the first time on the 3rd August, 1959 upto the last day of the first week of the Ninth Session, again on the 16th November, 1959, upto the last day of the first week of the Tenth Session, again on the 8th February, 1960 upto the last day of the first week of the Eleventh Session and lastly, on the 5th August, 1960, upto the 16th August, 1960.

13. The Committee considered and adopted the Report on the 10th August, 1960.

14. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

15. *Clause* 2.—The Committee feel that in order to avoid practical hardships where the managing agent body corporate is also the managing agent of an associate body corporate referred to in paragraph (ii) of sub-clause (c) of clause 3 of section 2 of the Companies Act, 1956 (hereinafter referred to as the Act), a subsidiary of the associate body corporate should not be an associate of the managing agent.

The Committee further feel that similar provision should be made in respect of secretaries and treasurers.

The Committee consider that in the definition of "managing director" a specific provision should be made to the effect that the power to do administrative acts of a routine nature when so authorised by the Board, such as, the power to affix the common seal of the company to a document etc. should not be included within substantial powers of management.

The clause has been amended accordingly.

The other changes made in this clause are of drafting nature.

16. *Clause* 3.—The amendments made in the clause are clarificatory in nature. The Committee consider it unnecessary to treat an Indian private company, the entire share capital of which is held by one or more bodies corporate incorporated outside India, as a private company which is a subsidiary of a public company for the purposes of the Act.

17. *Clause* 4.—The clause has been recast to make the intention clear.

18. *Clause* 5.—The Committee are of the view that the power of the Central Government to declare an establishment not to be a branch office in relation to a company for all or any of the purposes of the Act should also extend to a banking or an insurance company.

They are further of the view that the provisions of section 8 of the Act should conform with the new definition of 'branch office', contained in clause 2(d) of this Bill.

The clause has been amended accordingly.

19. *Clause* 9.—The Committee feel that the Central Government should have a general power to grant exemption to companies licensed under section 25 of the Act from any provisions of the Act according to the circumstances and exigencies of each case and that the power need not be confined only to the sections mentioned in the clause.

The clause has been amended accordingly.

20. *Clause* 12.—The amendment made in this clause is clarificatory in nature.

21. (*Original clause* 13).—The Committee consider that the period of seven days laid down in section 39 of the Act is quite sufficient for supplying copies of documents specified therein to members of the company and ought not to be raised to fourteen days. Also the existing fee of one rupee for supplying copies of documents should not be raised.

The clause has, therefore, been omitted.

22. *Clause* 14 (*Original clause* 15).—In respect of this clause it was contended that there was no justification for deeming a private company as a public one when twenty-five percent or more of its shares were held by one or more private companies, because such a company might not employ any public money directly or indirectly, particularly when the aggregate individual membership of the concerned company including the individual members of the share-holding private companies did not exceed 50. The Committee think that this contention is not without substance. They, therefore, feel that the restriction imposed under this clause should not apply to any private company if (i) the body corporate or each of the bodies corporate holding shares in the private company is itself a private company, (ii) no body corporate holds any share in any of the share-holding companies and (iii) the total number of individual share-holders of the share-holding company or companies together with the

individual shareholders of the private company does not exceed 50, which number should be computed in the same manner as is done in the case of a private company under section 3(1) (iii) (b) of the Act.

The Committee further feel that in computing the relevant percentage, no account should be taken of any shares in the private company held by a banking company either as a trustee for any individual or as an executor or as an administrator of a deceased person.

The Committee also consider it unnecessary to require a private company which has become a public company to pass a resolution for the change of its name. The purpose will be served if the company informs the Registrar about the conversion within a period of three months.

The clause has been recast accordingly.

23. *Clause* 15 (*Original clause* 16).—The Committee consider that where a company transfers any shares to a Bank to facilitate the disposal of these shares, then, if the shares are not disposed of within six months, the Bank should retransfer them to the company.

The clause has been amended accordingly.

24. *Clauses* 18 *and* 19 (*New clauses*).—These new clauses have been inserted to carry out changes in sections 62 and 63 of the Act, respectively, necessitated by the adoption of clause 17 (original clause 18).

25. *Clause* 21 (*Original clause* 20).—The clause has been recast to make the intention clear.

26. *Clause* 24 (*Original clause* 23).—The Committee feel that where the Board of Directors decides to increase the subscribed capital of a company by allotment of further shares, the further shares should ordinarily be offered to existing holders of equity shares *pro rata;* but these further shares may also be offered to any persons in any manner irrespective of the existing equity shareholders if a special resolution is passed by the company in general meeting or although no such special resolution is passed in that general meeting, if the proposal has been carried out by a majority of votes and the Central Government is satisfied on the application of the Board of Directors that the proposal is most beneficial to the company.

The Committee also feel that the provisions of section 81 should apply when the Board of Directors proposes to increase the subscribed capital of a company by allotment of further shares after the

expiry of two years from the formation of the company or after the expiry of one year from the first allotment of shares whichever is earlier.

The Committee further consider that the provisions of this section should not apply in relation to convertible loans or debentures *i.e.*, in relation to the increased subscribed capital caused by the conversion of debentures or loans into shares of the company if the following two conditions are satisfied: namely, that the terms of issue of debentures or loans has been approved by the company by a special resolution and also has been approved by the Central Government before such issue, or such terms are in conformity with the rules made by the Central Government.

The clause has been recast accordingly.

27. *Clause* 25 (*Original clause* 24).—The Committee are of the view that a penalty of a fine upto one thousand rupees is not a sufficient deterrent to prevent fraudulent duplication of shares especially when shares involving large amounts are concerned. They, therefore, feel that where such duplicates are issued for a fraudulent purpose, the penalty should extend upto a fine of ten thousand rupees in the case of the company issuing the duplicates and in respect of every officer of the company who is responsible for it, the penalty should be a fine upto the extent mentioned above or imprisonment upto six months or both.

They further feel that manner of issue or renewal of a certificate or issue of a duplicate thereof etc., payment of fees for the same, should be regulated by rules to be prescribed by the Central Government.

The clause has been amended accordingly.

28. (*Original clause* 25).—In the opinion of the Committee difficulty has not been experienced in applying the existing section 89 of the Act. The Committee feel that no useful purpose will be served by providing for readjustment of voting rights attached to different classes of shareholders at this stage when the period of one year mentioned in the section has already long passed. Further, as defaults in compliance with the provisions of the section must have been dealt with on the expiry of the prescribed period of one year, it would be invidious to make a change at this stage which might confer un-intended benefits on those whose defaults have not yet been detected.

The clause has been omitted accordingly.

29. *Clause* 26 (*Original clause* 26).—The clause has been recast to make the intention clear.

30. *Clause* 30 (*Original clause* 30).—Amendment made in this clause is of a verbal nature.

31. (*Original clauses* 31 *and* 32).—The Committee feel that the power of the Registrar to accept notice of part satisfaction should be retained to enable the company to notify such part satisfaction to the Registrar when it considers it necessary to do so.

Clauses 31 and 32 have accordingly been omitted.

32. *Clause* 31 (*Original clause* 33).—The Committee think that the scope of the clause should be made more comprehensive so as to include all cases of failure or omission to take action under part V of the Act.

The clause has been amended accordingly.

33. *Clause* 34 (*Original clause* 36).—The Committee consider that besides the name of the company, the address of its registered office should also be painted or affixed outside every office or place in which its business is carried on.

This has been provided in the amended clause.

34. (*Original clause* 38).—Under section 27 of the Securities Contracts (Regulation) Act, 1956, the transferee of a share claiming dividend thereon is required to lodge the share together with the instrument of transfer etc. with the company for registration in his name within fifteen days of the date when the dividend becomes due. But if a company closes its register of members under section 154 of the Act during that period of fifteen days, then the transferee cannot lodge the share with the instrument of transfer etc. and therefore, cannot get dividend thereon.

The clause sought to provide that the register of members should not be closed within the aforesaid period of fifteen days. The Committee are of the view that the provision to this effect should more appropriately be made in the Securities Contracts (Regulation) Act, than in the Companies Act.

The clause has been omitted accordingly.

35. *Clause* 37 (*Original clause* 40).—The amendment made in this clause is consequential upon the adoption of sub-clause (b) of clause 36 (Original clause 39).

36. *Clause* 38 (*Original clause* 41).—Amendments made in this clause are of clarificatory nature and also intended to remove certain practical difficulties.

37. (*Original clause* 44).—The Committee feel that the copying fees as laid down in clause (b) of sub-section (3) of section 163 of the Act ought not to be raised. The Committee further consider that the period of ten days specified in sub-section (4) of that section

for supplying a copy of register, index etc. is reasonable and need not be raised to fourteen days.

The clause has been omitted accordingly.

38. *Clause* 42 (*Original clause* 46).—The Committee think that the Registrar should be empowered to grant extension of time for holding annual general meeting upto a period of three months.

The clause has been amended accordingly.

39. (*Original clause* 48).—The Committee are of the view that twenty-one days' notice for calling a general meeting of a company is adequate and need not be raised to twenty-eight days.

The clause has, therefore, been omitted.

40. *Clause* 45 (*New clause*).—The Committee think that the phraseology of section 173(2) of the Act should be brought in line with that of section 299 thereof. The Committee further feel that the disclosure of the extent of share-holding interest in the company of a director, managing agent, if any, secretaries and treasurers, under section 173(2) of the Act need be set out in the statement only where the extent of share-holding is twenty per-cent or more.

The new clause provides for the same.

41. *Clause* 47 (*New clause*).—The Committee are of the view that the words "if it were a member" occurring in section 187 of the Act are unhappy and inappropriate since the body corporate referred to in the section is a member and the words should, therefore, be substituted by the words "if it were an individual member".

The new clause has been inserted accordingly.

42. *Clause* 49 (*Original clause* 52).—Since the period of notice for calling a general meeting has been retained as twenty-one days (by omission of original clause 48) the Committee consider that the period of special notice required to be given by the shareholders to the company for intention to move a resolution mentioned in section 190 of the Act should be reduced to fourteen days.

Similarly, the period of notice of fourteen days required under the proposed sub-section (2) of section 190 should be reduced to seven days.

The clause has been amended accordingly.

43. *Clause* 50 (*Original clause* 53).—The Committee feel that the filing of the Board's resolution according consent to contracts specified in section 297 of the Act with the Registrar as contemplated in the original clause would entail a good deal of expense for companies and would also throw an undue burden on the Registrars. The item has, therefore, been omitted.

The clause has been amended accordingly.

The other amendments made in this clause are of a clarificatory or consequential nature.

44. *Clause* 51 (*Original clause* 54).—The Committee are of opinion that some definite period should be prescribed within which the minutes of proceedings of every general meeting and that of the Board of Directors or of its Committee should be entered in books kept for that purpose and they have accordingly suggested fourteen days as the period for doing so.

They also feel that it would be reasonable if each page of such books is initialled or signed.

In the case of the minutes of the proceedings of a general meeting, it has been specified that either they should be signed within fourteen days of the meeting by the Chairman of the meeting or, in the event of his inability to do so, by a director duly authorised by the Board for the purpose.

The Committee strongly feel that minutes of proceedings should in no case be attached to the minutes books referred to above by pasting or otherwise.

This has been provided in the amended clause.

45. (*Original clause* 57).—The Committee consider that the period of seven days prescribed by sub-section (2) of section 196 of the Act should be enough for supplying copies of minutes and it need not be raised to fourteen days. The existing provision of this sub-section relating to the payment of fees should also stand.

The clause has been omitted accordingly.

46. (*Original clause* 58).—The object of the amendment proposed in this clause was that the Chairman's speech which forms a part of the proceedings of a general meeting of the company should not be circulated or advertised at the expense of the company unless it is accompanied by a summary of proceedings of the meetings.

The Committee feel that the Chairman's speech by itself serves a useful purpose and any provision requiring Chairman's speech to be accompanied by a summary of the proceedings of the general meeting will entail unnecessary expenditure to the company.

The clause has, therefore, been omitted.

47. *Clause* 55 (*Original clause* 60).—The amendments made in this clause are clarificatory in nature.

48. *Clause* 57 (*Original clause* 62).—The Committee are of opinion that the original clause involved an element of rigidity as it contemplated that depreciation should be deducted only in accordance with the method prescribed for provision of normal depreciation under the Indian Income Tax Act, 1922. They feel that a company should be allowed to provide for depreciation subject to certain safeguards, also in accordance with other recognised methods. In order to cover cases calling for special treatment a company should also be permitted with the approval of the Central Government to declare and pay dividends to its shareholders without providing for depreciation.

The clause has been recast accordingly.

49. *Clause* 58 (*Original clause* 63).—The Committee feel that delay in payment of dividends is not widely prevalent. They, therefore, consider that section 207 of the Act should be retained as it is with the modification that for the period of three months specified in the section within which dividends are to be paid, or dividend warrants posted a period of 42 days should be substituted.

The clause has been recast accordingly.

50. *Clause* 59 (*Original clause* 64).—The Committee are of opinion that besides the right of inspection of books of accounts to be conferred upon the Registrar, any officer of the Government authorised by the Central Government in this behalf should also be competent to inspect books if in the opinion of the Central Government inspection by an officer other than the Registrar is considered necessary.

Further, they are of opinion that punishment for failure to take all reasonable steps to secure compliance by the company with the requirements of section 209 as laid down in sub-section (5) thereof should be more deterrent than merely fine. Therefore, in this subsection, the Committee have now provided for imprisonment extending upto six months or fine extending upto one thousand rupees or both.

The Committee, however, feel that the sentence of imprisonment should not be awarded unless the act proceeded against was committed wilfully.

The Committee are of the view that the managing director should also be included amongst the managerial personnel charged by sub-section (6) with the duty of ensuring compliance with the requirements of section 209.

The provision of punishment under sub-section (7) has been brought in line with that of sub-section (5) as now amended by the Committee.

The clause has been amended accordingly.

The other amendments are of a verbal or clarificatory nature.

51. *Clause* 60 (*Original clause* 65).—The Committee feel it to be necessary and desirable that normally the shareholders and the public should be informed of the affairs of the company within six months of the end of its financial year.

The clause has been amended accordingly.

52. *Clause* 61 (*Original clause* 66).—The Committee are of opinion that the balance sheet of a company may be drawn up either in the form set out in schedule VI or in such other form as may be approved by the Central Government either generally or in any particular case. This is to enable progressive companies to adopt advanced methods in the matter of presentation of their accounts.

Provision has been made accordingly in the clause.

The other amendments made in the clause are of a consequential or drafting nature.

53. (*Original clause* 70).— In view of omission of original clause 48, this clause has also been omitted.

54. *Clause* 65 (*Original clause* 71).—The Committee feel that when the Registrar of companies allows inspection of the balance sheet of a private company by a person other than a member, the profit and loss account should not be shown along with the balance sheet. This would not be possible if the two are printed and filed together.

Therefore, the Committee feel that the copies of the balance sheet and the copies of the profit and loss account of a private company should be filed separately with the Registrar.

The clause has been amended accordingly.

55. *Clause* 66 (*Original clause* 72).—The Committee consider that when a company appoints an auditor other than the retiring auditor at the annual general meeting, it should send intimation about such appointment to the auditor concerned within seven days of his appointment. The Committee further think that the period within which the auditor so appointed should inform the Registrar of his acceptance or rejection of the appointment should be extended from 7 days to 30 days.

The clause has been recast accordingly.

56. *Clause* 68 (*Original clause* 74).—The amendments made in this clause are consequential upon an amendment accepted to clause 69 (Original clause 75).

57. *Clause* 69 (*Original clause* 75).—The Committee are of opinion that the provisions relating to branch audit might cause some hardship particularly to companies whose branches are spread all over the country or where the branch concerned is a small one. They, therefore, feel that the Central Government should be authorised to make rules for exempting any branch office from the requirement of compulsory audit to the extent to be specified in the rules. While making such rules, the Central Government should have regard to the arrangements made by the company for the audit of the accounts of the branch office and the nature and quantum of activity carried on at that branch during a period of three years immediately preceding the date on which the branch office is exempted etc. and any other matter which in the opinion of the Central Government justifies the grant of exemption.

The clause has been amended accordingly.

Some other changes of clarificatory nature have also been made in the clause.

58. *Clause* 70 (*New clause*).—The Committee think that where the Central Government has reason to believe that the affairs of a company are not being managed in accordance with sound business principles or prudent commercial practices or they are being managed in a way likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains or the financial position of the company is such as to endanger its solvency, it should be entitled to order a special audit of the company's accounts, so that a critical appreciation of the company's working and the state of its affairs may be available to the Government.

The new clause has been inserted accordingly.

59. *Clause* 71 (*Original clause* 76).—The Committee feel that the scope of sub-section (1) of section 234 of the Act should be widened to empower the Registrar to call for information and explanation with respect to any matter to which the document submitted to him purports to relate. They also feel that the penalty for failure to supply the information and explanation asked for by the Registrar should be enhanced from a fine of rupees fifty to rupees five hundred and that an additional daily fine of rupees fifty should be provided in case of a continuing offence.

It has also been provided that where the Registrar has obtained the books and papers which are required by the company, he may retain copies or extracts therefrom and attach those copies or extracts to the original documents filed under sub-section (1) of section 234 of the Act before returning those books and papers to the company.

The clause has been amended accordingly.

Other changes are of a clarificatory nature.

60. *Clause* 72 (*Original clause* 77).—The Committee are of the view that an obligation should be cast on the Registrar to return the books and papers within thirty days after seizure to the company or the other body corporate or the person concerned, so that the normal business or working of the company is not hampered. In order that subsequent enquiry or follow-up action is not impeded, the Registrar has been empowered to take copies or extracts from the seized documents before returning them.

The clause has been amended accordingly.

Some changes of a consequential or drafting nature have also been made.

61. *Clause* 73 (*Original clause* 78).—The clause has been redrafted. The additions in the clause are consequential upon the adoption of clause 59 (original clause 64).

62. *Clause* 74 (*Original clause* 79).—The Committee feel that in order that the inspector may examine on oath any officer, agent or other employee of the company as provided for in sub-section (2) of section 240 of the Act the inspector should be given power to require such officer, agent or other employee to appear before him personally.

The clause has been amended accordingly.

The other changes are clarificatory in nature.

63. *Clauses* 75 *and* 77 (*Original clauses* 80 *and* 82 *respectively*).—The clauses have been amended to make the intention clear.

64. *Clause* 79 (*Original clause* 84).—The Committee are of opinion that the scope of sub-section (1) of section 250 should be widened so as to enable the Central Government to impose restrictions in suitable cases although there may not be any investigation under sections 247, 248 or 249 of the Act.

They further feel that the Central Government should be authorised to vary or rescind any order made by it under sub-sections (1), (3) or (4).

The Committee also feel that no order of the Court whether interim or final under sub-section (6) should be made without giving the Central Government an opportunity of being heard.

It has also been provided that an order of the Central Government shall be served on the company within fourteen days after the making of the order.

The clause has been redrafted accordingly.

65. *Clause* 84 (*Original clause* 89).—The Committee are of the view that the company should have the option of informing their members of the candidature of a person or the intention of a member to propose a person as a candidate by serving individual notices upon members not less than seven days before the meeting individually or through advertisement in two newspapers, one in English and the other in the regional language, not less than seven days before the meeting.

The clause has been amended accordingly.

66. *Clause* 88 (*Original clause* 93).—The clause has been amended so as to enable a director to file his consent after appointment within a period of thirty days instead of seven days under sub-section (2) of the proposed section 264.

67. *Clause* 99 (*Original clause* 104).—Where the sole selling agent is a firm or a body corporate, the term of its office is regulated by section 204 of the Act. But where the sole selling agent is an individual there is no express provision in the Act relating to his term of office. The Committee feel that section 294 should regulate the term of office of the sole selling agent whether he is an individual or a firm or a body corporate.

The Committee think that instead of banning the appointment of an erstwhile managing agent as a sole selling agent of the company whose managing agent he was within three years of the cesser of the managing agency, it will be sufficient if such appointments are allowed to be made during that period with the approval of the Central Government.

The Committee also consider that the Central Government should have the power to call for information from a company having a sole selling agent by whatever name called in order to satisfy itself whether or not the terms and conditions of appointment of the sole selling agent are prejudicial to the interests of the company and, if necessary, to vary them.

In the opinion of the Committee, power should also be given to the Central Government to call for information regarding the terms and conditions of appointment of selling agents of a company where it has more selling agents than one for any area or areas in order to see whether any of those selling agents may not be for all intents and purposes sole selling agent of the company for such area or areas. In such a case also the Central Government should have the power to vary the terms and conditions of appointment of the selling agent declared by the Central Government to be the sole selling agent of the company.

The clause has been recast accordingly.

68. *Clause* 111 (*Original clause* 116).—The Committee consider that where before coming into force of this amending legislation, companies have been making monthly payments to their directors for attending meetings of the Board or a Committee thereof, such arrangements should not be disturbed till the term of the present incumbents cease or for a period of two years after coming into force of this legislation, whichever is earlier.

The Committee further consider that the ceiling on the remuneration of a whole-time director or a managing director prescribed as percentages of the net profits by the proviso to the proposed sub-section (3) should not be rigidly applied, but be waived at the discretion of the Central Government. Similarly, the percentage ceiling on the remuneration of directors other than whole-time or managing directors laid down in sub-section (4) of the existing section should be relaxable by the Central Government in suitable cases.

The clause has been amended accordingly.

69. *Clause* 114 (*Original clause* 119).—The Committee are of the view that the restrictions imposed by section 314(1) of the Act should not apply in a case where a relative of a director or a firm in which such relative is a partner has been holding a place or office of profit in the company before such person was appointed as a director thereof.

A provision has been made in the clause accordingly.

70. *Clause* 119 (*Original clause* 124).—Although the Committee agree with the proposal that no company should appoint or employ as its managing agent any body corporate which is a subsidiary of itself or of any other body corporate, after the commencement of the present amending Act, they are of the view that the subsidiary companies which have been acting as managing agents uptill now should not be prevented in future from acting as the managing

agents of the companies at present managed by them as it may cause hardship in certain cases.

The clause has been amended accordingly.

71. *Clause* 120 (*New clause*).—The Committee feel that attempts to circumvent the provision contained in section 332 of the Act to the effect that after the 15th August, 1960, no managing agent shall manage more than ten companies through the device of a managing agency company 'transferring' managed companies in excess of ten to other managing agency companies which are really in the same group and which manage less than ten companies each, should be forestalled.

This new clause has been added to make such evasions more difficult by plugging the loopholes in section 332(4) of the Act.

72. *Clause* 123 (*Original clause* 127).—The Committee consider that where a managing agent, being a body corporate, is a subsidiary of another body corporate and the shares of the other body corporate are dealt in, or quoted on a recognised stock exchange, no change in the ownership of the shares of the other body corporate should be deemed to be a change in the constitution of the managing agent for the purposes of section 346 of the Act.

The clause has been amended accordingly.

The other amendments made in the clause are of a clarificatory nature.

73. *Clause* 130 (*Original clause* 133).—The Committees are of opinion that in the case of a contract for supply or rendering any service other than that of managing agent, the management of a company besides obtaining the approval of the general body of share-holders by a special resolution should obtain the approval of the Central Government so that there may be a check on any tendency on the part of the managing agents to obtain extra remuneration by contracts for the supply or rendering of service.

The other amendment is of a drafting nature.

74. *Clause* 132 (*Original clause* 135).—The Committee are of the view that it should be made clear that the prohibition in section 369 of the Act against the grant of loans to managing agents or their associates should not apply when the loanee is the subsidiary of the lending company.

The clause has been amended accordingly.

75. *Clause* 133 (*Original clause* 136).—The Committee feel that it should be made clear that section 370 of the Act would be attracted also in the case of a loan made or guarantee given by a company

to a partnership firm, any partner of which is a body corporate under the same management as the lending company. The Committee further feel that every lending company should keep a register showing the names of all bodies corporate under the same management as the lending company and the name of every firm in which a partner is a body corporate under the same management as the lending company and detailed particulars regarding the loans made, guarantees given etc. should be entered in the register, which shall be open to inspection by the members of the company. Failure to maintain the register has been made punishable with fine.

The clause has been redrafted also with some other consequential or verbal amendments.

76. *Clause* 135 (*New clause*).—Amendment of section 371 was necessitated by the introduction of sub-section (1C) to (1F) in section 370 of the Act as the Committee have recommended in clause 133 (Original clause 136).

A new clause amending section 371 of the Act has accordingly been inserted.

77. *Clause* 136 (*Original clause* 138).—The Committee feel that in applying the restrictions imposed on investments in companies outside the same group, investments in the shape of debentures of those companies (which do not help in the acquisition of control over those companies) should be left out of account.

As the investment in rights shares does not normally mean acquisition of a greater degree of control over the 'investee' company and are sometimes absolutely necessary if the investing company is to maintain its existing position in relation to the conduct of affairs of the other company, the Committee feel that investments in rights shares should not be subject to percentage ceilings. It has, however, been made clear that investments made in rights shares must be taken into account for the purpose of applying the limits when further investments are to be made in shares, other than rights shares.

The Committee feel that infringement of the provisions of sub-section (6) or (7) of the proposed section may be punishable additionally with a fine of rupees fifty for every day during which the default continues.

The Committee consider that investment companies should attach to their balance sheets a statement showing only the investments existing on the date on which the balance sheet is made out.

The clause has been amended accordingly.

78. *Clause* 138 (*New clause*).—The proposed sub-section (8) of section 372 provides for a penalty for contravention of sub-sections (6) and (7) of that section. This has necessitated a slight verbal alteration in section 374 of the Act.

A new clause amending section 374 has, therefore, been inserted.

79. *Clause* 145 (*Original clause* 146).—The Committee are of opinion that in order to avoid possible hardship particularly to smaller companies, it should be provided that the ceiling of five per cent of net profits on the remuneration of managers may be exceeded with the approval of the Central Government.

The clause has been amended accordingly.

80. *Clause* 154 (*Original clause* 155).—The Committee feel that applications about frivolous or minor matters under sections 408 and 409 of the Act need not be referred to the Advisory Commission but Government might deal with them independently.

They are also of the view that Government might pass interim orders on those applications but before passing final orders the opinion of the Advisory Commission ought to be obtained.

The clause has been amended accordingly.

81. *Clause* 157 (*New clause*).—The Committee consider that the present penalty of a fine of rupees five hundred as provided under section 420 of the Act is not an adequate deterrent. In their opinion offences under that section should be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees.

A new clause amending section 420 has been inserted accordingly.

82. *Clause* 160 (*New clause*).—The Committee are of the opinion that intimation of an order made by the Court for the winding up of a company under section 444 of the Act should also be sent to the Registrar.

The new clause amending section 444 has been inserted accordingly.

83. *Clause* 164 (*Original clause* 163).—The Committee feel that penalty under sub-section (5) of section 454 of the Act for failure to draw up and furnish the statement of affairs to the Official Liquidator should in appropriate cases be more deterrent and should, therefore, also include imprisonment which may extend to two years, or fine as at present or both.

The clause has been amended accordingly.

84. *Clause* 168 (*New clause*).—The Committee feel that in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Court, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order should be excluded. This should hold good irrespective of anything to the contrary contained in any other law.

A new clause inserting a new section 458A has been inserted accordingly.

85. *Clause* 169 (*Original clause* 167).—The Committee feel that power should be conferred upon the Government to move the Court for replacement of a liquidator appointed by the Court under the Indian Companies Act of 1913 by Official Liquidator referred to in section 448 of the Act.

The clause has been amended accordingly.

86. *Clause* 185 (*New clause*).—The Committee are of the view that the Supreme Court should be given power to make rules providing that a liquidator may exercise any of the powers referred to in sub-clause (ii) or sub-clause (iii) of sub-section (1) of section 546 without the sanction of the Court but subject to such conditions as may be specified in the rules.

A new clause amending section 546 has been inserted accordingly.

87. *Clause* 188 (*Original clause* 185).—The Committee feel that in order to avoid any undue hardship the Central Government may be empowered to remit in any proper case either in part or in whole the amount of interest which the liquidator is liable to pay under sub-section (9) of section 555 of the Act.

The clause has been amended accordingly.

88. *Clause* 193 (*Original clause* 190).—The Committee think that the penalty for non-compliance with an order of the Court under sub-section (1) of proposed new section 614A should be fine or imprisonment or both.

The clause has been amended accordingly.

The other amendment is consequential in nature.

89. (*Original clause* 197).—The Committee feel that a specific provision as contained in section 622 of the Act relating to jurisdiction to try offences should be retained.

The clause has, therefore, been omitted.

90. *Clause* 202 (*Original clause* 200).—The clause has been redrafted to make the intention clear.

91. *Clause* 203 (*Original clause* 201).—The Committee think that in a criminal proceeding under sub-section (1) of section 633, the Court should not grant relief from a civil liability which may attach to an office in respect of any negligence, default etc. mentioned in the said sub-section.

Drafting improvement has been carried out in sub-section (2) of the section to make the intention clear.

92. *Clause* 204 (*Original clause* 202).—The Committee consider that the Government should be authorised to prescribe fees which may be different for different matters not exceeding one hundred rupees to be paid along with applications made by a company for approval, sanction, consent etc. under the provisions of this Act.

The clause has been amended accordingly.

93. *Clause* 206 (*New clause*).—The Committee feel that it is desirable in order to avoid possible hardships to make a general provision that, excepting in cases where it is expressly provided, in computing the period within which any order of the Court is required to be filed with the Registrar or company or any other person, the time taken in drawing up the order and in obtaining a copy thereof should be excluded.

A new clause incorporating new section 640A has been inserted accordingly.

94. *Clauses* 207 *and* 208 (*Original clauses* 204 *and* 205 *respectively*).—The Committee feel that sub-sections (3) of sections 641 and 642 should be redrafted to incorporate the new formula which has been agreed to by the Committee on Subordinate Legislation for laying notifications before the Houses of Parliament.

This has now been provided for in the amended clauses.

95. *Clause* 210 (*Original clause* 207).—The amendment made in the clause is of a drafting nature.

96. *Clause* 213 (*Original clause* 210).—The Committee consider that the list of relatives enumerated in the proposed schedule 1A should include a son's daughter's husband but omit the words "including step father" in item 1 and the categories mentioned in the original items 24 to 27, 31 to 34, 51, 58 and 59.

The list has been revised accordingly.

97. *Clause* 214 (*Original clause* 211).—The Committee feel that footnote (L) to the form of the Balance Sheet in part I of Schedule VI should be modified to accord with section 372 as proposed to be amended and to make the intention clear and the explanation proposed to be inserted by the clause in para 3(x) of Part II of the Schedule relating to the profit and loss accounts should be omitted in order to avoid practical difficulties. The words "and any other person" occurring in the substantive part of the proposed para 4 of Part II of the Schedule should be omitted as they are inappropriate and may cause practical difficulty. The word "percentages" in the proposed para 4A in the same Part should also be omitted as no auditor received his remuneration by way of a percentage.

The clause has been amended accordingly.

98. The Joint Committee recommend that the Bill as amended be passed.

NEW DELHI;
12*th August*, 1960.

ARUN CHANDRA GUHA.

Note

I would like to make a suggestion for amendment of section 153 of the Companies Act, 1956, though there is no amendment proposed to that section in the Bill. I note that the Joint Committee also had introduced some new provisions which are not covered in the Bill. Section 153 provides that no notice of any trust express, implied or constructive, shall be entered on the register of members or debenture holders or be receivable by the Registrar. Though the ostensible purpose of the provision is that the company should not take notice of any equitable interests in the shares of the company, it has given rise to a lot of practical difficulties in the matter of purchase and sale of shares by the trust and collection of dividends. I do not see any objection in recognising trusts and their entry in the share register as members. One or two trustees may be authorised by a resolution of the trustees where there are more than two trustees to sign and act on behalf of the trust. The trustees can then easily act on behalf of the trust in respect of its investments, namely, purchase and sale of shares and collection of dividends.

There is also another good reason why a company should recognise trusts as members. That is the necessity to avoid abuse or fraud. The shares of a trust have necessarily to be registered now in the names of one or two trustees in their individual names and those persons can deal with the income or sell the shares in fraud of the trust. Of course, later on, action may be taken against the erring trustees, but meanwhile the mischief would have been done. In order to avoid that and also make it easy for well-established and recognised trusts to function without being put to inconvenience in the matter of purchase and sale of shares and collection of dividend I strongly feel that it is necessary that trusts should be recognised under Company Law and their entry in the share register as members permitted.

NEW DELHI;
10*th August*, 1960.

P. D. HIMATSINGKA

MINUTES OF DISSENT

I

In its order of the 15th May, 1957, constituting the Sastri Committee to consider the working of the Companies Act, 1956, the Government of India had laid down certain wholesome objectives, namely,

(i) to overcome certain practical difficulties in its working as may have been encountered since it came into force;

(ii) to remove such drafting defects and obscurities as may have interfered with the working of the Act; and

(iii) to consider what changes in the form or structure of the Act, if any, were necessary or desirable to simplify it.

On the basis of these directives the Committee, after an exhaustive enquiry, including the examination of many witnesses, made their Report and the present Bill was framed, containing many substantial amendments of the law. The Select Committee in its report has, however, gone a good deal further. The tenor of the amendments which have been introduced in the Select Committee, most of them by Government, would suggest that Government had second thoughts and a number of amendments have been introduced which cannot, by any stretch of imagination, be considered as necessary to "overcome practical difficulties", "remove drafting defects" or to "simplify" the form or structure of the Act of 1956.

Encroachments on management in the interests of the shareholders and by the shareholders are understandable, but it is difficult to understand how the interference of the governmental bureaucracy in the day to day affairs of a Company either safeguards the interests of the shareholders, even when it is unwanted by the shareholders, or promotes development and expansion of industries. Unfortunately, I was not able to convince the majority of my colleagues in the Select Committee about the unfair discrimination which is sought to be practised on a section of the industrial and business community represented by joint stock companies through these excessive regulations which bureaucratic zeal has sought to impose. I am opposed to this measure of over-regulation because I believe that the economic development of the country would be advanced if the entrepreneurs who are represented in large measure by joint stock enterprise in this country are given a fair chance to live and to expand, to run their businesses

using their own judgement subject to the control which is exercised by the investors, namely, the shareholders and subject only to minimum interference by Government.

I shall proceed to illustrate this general consideration by a reference to certain of the provisions inserted in the Bill:

1. *New Clause* 70:

The first of these is the provision for the appointment of a Special Auditor. This provision is remarkable for the sweeping powers conferred on what might ultimately turn out to be a Deputy Secretary of Government in directing a special audit of a Company's affairs. The Central Government is given power under this section to appoint a special auditor where the Government is of opinion,

(a) that the affairs of any Company are not being managed in accordance with sound business principles or prudent commercial practices (it is difficult to find a power vested in vaguer and more general language than this);

(b) that any Company is being managed in a manner likely to cause serious injury or damage to the interest of the trade, industry or business to which it pertains;

(c) that the financial position of any Company is such as to endanger its solvency.

A greater inroad on the autonomy of joint stock enterprise or in fact on the freedom which is given by the Constitution to people to carry on trade and businesses in their own interest it is difficult to find. The test applied is completely subjective. It is all a matter of Government's opinion without even the corrective powers which could be exercised judicially and impartially by a court of law. Government cannot be unaware that a decision to appoint a special auditor by itself would imperil the financial position of a Company and might even endanger its solvency. The good name and reputation of companies are plants of delicate growth, hard to build, easy to destroy. What is sound business principle or prudent commercial practice cannot surely be the prerogative of a Government department. There can be more than one view on the subject and those who are actually running industries with the help of presumably competent Boards of Directors and with the safeguards which already exist in the law are far better judges than the bureaucracy of what sound business principles are or prudent commercial practices should be in their particular class of business. The appointment of a special auditor is also a slur on the regular auditors of the Company.

This power to appoint a Special Auditor is, in my view, completely unnecessary, apart from being unjustified, because under various sections of the Act, as confirmed and strengthened by this Bill, the powers of investigation of Companies, the right of minority of shareholders to approach Government in matters of management and finally the very wide powers conferred on Registrars, coupled with the audit by the Company's own auditors, fully safeguard the business interests of Companies as entities and of the shareholders as primarily interested in the equity.

The powers conferred on the Special Auditor appear to go much further than the powers conferred on the auditors of the Company. I refer to sub-clause (5) of the new clause where, in the widest possible terms, there is an obligation cast on every person called upon to furnish such information "as may be required by the special auditor" in connection with the special audit upon pain of a penalty of Rs. 500 if the information is not given. Here again, a subjective test is applied and the special auditor can call for any information, relevant or irrelevant, so long as he thinks it is required in connection with his audit.

I am opposed to the whole clause but, if a provision on the lines mentioned in the clause is to be incorporated in our Company Law, certain suitable safeguards should be provided.

First, before the Government directs a special audit, it should communicate to the Company broadly why they consider there has been a breach of either (a), (b) or (c) which has led the Government to decide on taking steps for appointing a Special Auditor. This will enable the Central Government, after hearing the Company, to withhold the appointment of a Special Auditor if they are satisfied with the Company's representation.

Secondly, the Company should be entitled to call for a copy of the report and make its representations on it.

Thirdly, in keeping with the spirit of the Constitution, the Company should be at liberty to appeal against Government's decision to a Court of Law.

2. *Clause* 79:

The terms of the original Clause in the Bill were exproprietory in character since they conferred on Government powers to veto the transfer of shares and even the exercise of voting rights. The amendments made in Select Committee go substantially further since they extend to shares which have not yet been issued but which may

be issued in the future so that the shareholder against whom the order is passed will be deprived of his quota in a "rights" issue. Such a prohibition over a period of three years must be considered a violation of Article 31 of the Constitution. The benefit of a rights issue can be very valuable property and, as Companies' issues have to be made within a limited period of time, very much less than three years, it follows that the exercise of the veto in regard to such shares means for all practical purposes a cancellation of the benefit vested in the shareholder. There is no provision in the clause which enables a shareholder to claim damages if ultimately it is established that Government's orders were unnecessary, nor could such a shareholder ask for a postponement of the "rights" issue pending a review of the proceedings under the clause in a Court of Law.

Under new sub-clause (3), the powers conferred by the Section become exercisable when the Central Government is of the opinion that a change in management would be prejudicial to the "public interest". It is really the interests of the shareholders, or minority interests of shareholders, that should be involved. Therefore the powers should be exercised by the Government at the instance of at least minority interests in a Company in much the same way as the parallel powers given to Government under Section 398 (1) (b) are exercisable where there is danger of control oppressive to such minority interests or prejudicial to the Company and its shareholders.

The minority interests in this case might be the same as provided in Section 399 (1), namely, shareholders holding 10 per cent. of the capital or 100 in number or one-tenth of the total number of shareholders.

As in Section 398, there should be the safeguard of inviting a Court's order before action is taken under the Clause.

Further, the power under the Clause should not extend to the receipt of "rights" shares.

3. *Clause* 99:

The amendments moved by Government and accepted by the Select Committee in regard to the appointment of sole selling agents represent perhaps a greater inroad into the internal management of a Company than any of the other amendments. Applying the now familiar subjective test, the Central Government is given the widest possible powers to write new agreements with selling agents, and

even cancel certain selling agencies by declaring sole selling agents for areas where there is more than one selling agent, all upon terms which the bureaucracy dictates. This is really a form of bureaucracy run amuck and places Indian industry in an unenviable position, particularly as foreign competitors may appoint selling agents on more realistic terms and thus be able thereby to capture the trade to the loss of Indian manufacturing interests.

As the power apparently is exercisable where the Central Government is of opinion that the terms and conditions of appointment of the selling agents are "prejudicial to the interests of the Company", it is surprising that no consultation with the Board of Directors of the Company, or even with the shareholders who are the owners of the Company, is provided for. One can well imagine how the sales of products of a Company against whom the power is exercised will suffer during such period as is needed for the Government to undertake examination of the existing selling agency terms and conditions. No cogent reason has been given for the introduction of such sweeping powers at the eleventh hour. It might even be suspected that these powers have been introduced to make it easier for the State Trading Corporation to enter by the backdoor the field of sales of the products of a particular industry.

4. *Clause* 136:

An objectionable type of interference by Government in the working of a Company is illustrated by the provisions of sub-section (4) of the new section 372 proposed by this clause. The normal business of an investment Company is to buy and sell shares. Proviso 2 to sub-section (2), however, unlike proviso 1, applies to investment Companies so that no investment Company is entitled to make investments in other bodies corporate in the "same group" beyond twenty per cent. of the subscribed capital. If it has already done so by the date of the coming into force of this Act, any investment in that group has to receive the approval of the Central Government. Obviously, it will take time for a Company to receive that sanction. It is plain that the shareholders are the best people to judge whether or not a further investment in the "same group" beyond twenty per cent. should be agreed to. Therefore, the additional requirement that, besides a resolution of the investment Company in general meeting, the approval of the Central Government is obtained is unjustified.

The proposed new sub-section (3) under this clause is objectionable, because it is retroactive in application. The retrospective character of the clause is such as to cover all investments made by a

Company from the commencement of its existence so that, reading it with the proviso to sub-section (2), if the Company has already, before the commencement of the proposed Amendment Act of 1960, exceeded the prescribed percentages under provisos 1 and 2 of the proposed sub-section (2), it cannot invest in a single share unless both the sanction of the shareholders and the Central Government is received. This might even prohibit variations investments even though no additional fresh funds are invested, because at the time of making an investment the Company will have already exceeded the prescribed percentages. These rigorous and somewhat harsh provisions seem to be quite unnecessary, and there is no reason why the provisions of the proposed sub-section (3) should have retrospective operation. In my view, therefore, the following amendments should be made in this clause:

(i) The approval of the Central Government should be deleted as unnecessary under the proposed sub-section (4); and

(ii) Sub-section (3) should not have retrospective effect before the commencement of the Amendment Act of 1960 or at the earliest before the commencement of the Companies Act, 1956.

Corporate Finance for Political Funds

It is a matter for regret that the Joint Select Committee turned down certain amendments to clause 103 of the Bill and to section 13 of the Act the effect of which would have been to prohibit contributions from Joint Stock Company finances to any political party or fund.

The issue is one of considerable importance for the effective functioning of our nascent democracy. While the influence of money power cannot be eliminated altogether in a free society any more than the influence of labour, of landed interests or of other numerically large agglomerations of individuals with common economic interests, it is important that its influence should be limited as far as possible. Political parties are necessary for the functioning of parliamentary democracy and they naturally need finance for their functioning and for their election campaigns but such funds should come from those individual citizens who are their members or supporters. Fortunately, there are in most cases natural limits to such contributions but permitting contributions by joint stock enterprises opens the door to contributions of a magnitude which are normally not within the capacity of most citizens. They also have the

serious demerit that those at whose instance they are made are not spending their own money but are utilising the funds of shareholders which were never intended for such a purpose.

It has been argued that a collective entity like a joint stock Company should not be prevented from giving support to that party with whose ideology its members have sympathy. It is obvious, however, that all shareholders of any Company cannot possibly be expected to have the same ideological bias. Members of different political parties and those holding different political views subscribe to a Company's shares without any thought of political implications. The decision of the Joint Select Committee to permit such contributions unquestionably has the effect of accentuating party and political warfare in the ranks of joint stock Companies. Rival groups of shareholders will press for contributions to this or that political party and the minority will rightly complain that their money is being used to advance a political cause which is repugnant to them. A suggestion made for enabling minority shareholders to contract out of such contributions, as in the case of the political levy imposed on members of British trade unions, was also turned down. At a time when Shri Jayaprakash Narayan is campaigning for a non-party democracy and most parties are prepared to agree that party influence and strife should be withdrawn from panchayat and district bodies, it is lamentable that partisanship and factionalism should thus be encouraged in a field which has hitherto been relatively free from it.

There are two other serious objections to this decision. In a controlled economy, the Government of the day has virtually the power of life and death over the fortunes of business and industrial enterprises. The possibility of business houses being coerced into making contributions to a political party whose policy may even be opposed to that of business and industry as a whole cannot therefore be ruled out. At the time of the last general elections, several businessmen complained of undue pressure being exercised upon them by leaders of the ruling party, and in between elections there are numerous calls for contributions to purses and advertisements for souvenirs published on the occasion of party meetings. The other objection is that selfish and unscrupulous elements in business seek advantages for themselves by getting into the good books of the ruling party in the hope of compensation in the months and years to come. If there is one vested interest in India today, it is that of those in office along with their satellites and hangers-on in business who profess to support the policies of the ruling party in order to feather their own nests. Since every control is potentially a source of corruption, the Joint Select Committee's decision pushes the door wide open to corruption of this nature.

In this context, the fact that the majority in the Joint Select Committee turned down the salutary proposals presented to them makes it quite clear which party in this country is dependent on big business for filling its coffers and supporting its candidates for public office.

NEW DELHI; M. R. MASANI.
10*th August*, 1960.

II

While I am not a Director or connected directly or indirectly with the management of any Joint Stock Company I feel impelled to write this minute of dissent on some of the controversial aspects of the Bill as it has emerged from the Joint Select Committee. I would first like to record my strong protest against some new clauses of a drastic and far-reaching character which have been introduced by the Joint Select Committee and which did not even find a place in the draft Bill. Usually a Select Committee confines itself to making such changes as are incidental or relevant to the clauses of the Bill, unless the terms of reference to them include making recommendations or proposals outside the clauses of the Bill as well. In this amendment of the Company Law which has gone through several stages of Committees, parliamentary debates, etc. no drastic changes should have been introduced at this stage. It should also be noted that these new proposals have not been considered by the interests concerned nor have they been put to the witnesses who gave evidence before the Joint Committee. It is, therefore, objectionable, in my opinion at the Joint Committee stage to introduce important and controversial changes in the law in this manner.

It is possible to write a dissenting minute on many clauses of the Bill which are either unnecessary or irksome. But I am confining myself to some important clauses. I may, however, refer to some general aspects of the Bill. The powers of Government and other authorities under the Companies Act are already large. Here again, as was the case with Life Insurance business, the failure of high Government officials to use the wide and drastic powers that they had under the existing law has been used as an excuse or argument to give still wider powers to the same system if not the same officers of Government. How that will improve matters, it is difficult to understand. They are being further enlarged by this Bill. The Government, the Registrar and the Inspector investigating the

affairs of companies are being given much larger powers. Further in respect of many more matters of company management and administration, it has been provided that the approval or sanction of the Central Government must be obtained. I cannot find a parallel in the Company Law of any other country which requires the approval of Government in respect of so many matters of internal day to day administration. It would appear that the Department of Company Law Administration would like to have its finger, or rather active hand in the activities of all Corporations and have a say in the functioning of the entire corporate sector.

I feel that the law has already gone too far and prescribed too many restrictions which in actual practice would make difficult, if not impossible the smooth and efficient management of business. The sum total of all the restrictive provisions creates an impracticable situation, from the point of view of the practical working of business concerns. This, I know, has been found to be so in many instances.

Further, there is such an unnecessary amount of forms filling, submission of returns to the Registrar and of applications to Government. The present Bill adds further to the list of such requirements. All these mean a tremendous cost to companies and no return to its shareholders, workers or consumers. I wonder whether during the three years and more the new Act has been in force, Government have found anything fundamentally wrong in the management and administration of companies or whether there have been attempts generally by companies to defraud the shareholders or the public. There may be such rare instances but to take such large and blanket powers over the entire field of corporate sector is certainly not justified. Forms filling, making of applications, sending of returns etc. only entail a colossal waste of national effort, time and material. That much of paper used in the preparation of unnecessary forms and returns could have been put to much better use, what with the present shortage of paper.

It is not merely in the companies sector which is managed by managing agents that these formalities of consents and approvals are required but also in the case of other companies as well. While attempts are being made to simplify, rationalise and streamline the laws, procedures and formalities under the various laws, those under Company Law have however, been made unnecessarily more complicated and expensive to companies. In my opinion, the time has come to scrap the entire law and re-enact the corporate law to make it more simple and understandable to the public and enable big as well as small entrepreneurs to start numerous factories all over India

to rapidly industrialise and develop the country. Company Law is the mechanism through which the private sector operates and when the private sector has been assigned a role which it has to fulfil, nothing should be done which will come in the way of its free functioning. There is today a climate which is favourable for investment and for the floatation of new companies largely because of certain factors operating in the issue market. The new Bill as it has emerged from the Joint Committee will however, dampen enthusiasm of entrepreneurs and make difficult the successful floatation of new companies. I may add that this piece of legislation which gives such large regulatory powers to Government to interfere in the internal affairs and administration of companies will also retard foreign collaboration and investment in India.

Special Audit: *Clause* 70:

This is an instance where Government have taken more powers. They can appoint a special auditor if they are of the opinion that the affairs of the company are not being managed on sound business principles, that the company is being managed in a manner likely to cause injury to the interests of the trade or industry to which it pertains or that the financial position of the company is such as to endanger its solvency. The special auditor may be asked to audit the companies account for any period, notwithstanding that the company's statutory auditor has already completed the audit of the accounts for the same period.

I do not understand the necessity for this provision inasmuch as the Companies Act already provides ample remedies to deal with companies which are not functioning properly or are mismanaged. Government can launch an investigation into its affairs. Minority shareholders can seek relief in Court for oppression or mismanagement, Government can appoint Directors on the Board and they can prevent a change in the Board of Directors on an application by shareholders. Apart from these remedies under Company Law, recourse can also be had to the provisions of the Industries (Development and Regulation) Act, 1951, under which investigation can be ordered. Therefore, this provision is clearly not called for. Moreover, it is not fair to the statutory auditor of the company who has already audited the accounts of the company for the same period. The clause also provides that the expenses of such special audits will be borne by the Company. It is unjust and unfair to throw additional financial burden on the company by appointing a special auditor against its wishes and making the expenses of the audit payable by it.

Sole Selling Agents: Clause 99:

The provision regarding sole selling agency is another instance of interference by Government in the internal affairs of the company. Government have taken power under this clause to require information regarding the terms and conditions of appointment of the sole selling agents. They can vary them if in their opinion they are prejudicial to the interests of the company. Where there are more than one selling agent for a company in any area they may after requiring like information appoint one person as sole selling agent.

The appointment of a sole selling agent is done by the directors of a company after considering the qualifications and the suitability of a person to push the sales of the company's products. His business experience and contacts and his integrity and suitability otherwise are all taken into consideration. If a person is not found satisfactory another person may have to be appointed. The considerations which weigh in the appointment of sole selling agents differ from company to company depending upon their peculiar sales techniques. It is, thus, a purely internal matter of administration and no public policy is involved requiring the intervention of Government. Even now the law provides that the appointment of a sole selling agent by the directors, is to be approved by the company in general meeting which is sufficient safeguard. There is absolutely no reason, therefore, for Government to take this power.

It must also be remembered that all big manufacturing companies will have to appoint sole selling agents. If all the applications are to be considered by Government, they will have their hands full and consequently the company's work will be delayed. This in turn will interfere with the smooth functioning of companies.

Inter-Company Investment: Clause 136:

Under this clause, a company cannot normally make investments in other companies or bodies corporate, exceeding 30 per cent. of its subscribed capital.

This, in my opinion, will be a retrograde step. Particularly during present times, there is a paucity of investible savings by individuals as a result of high taxation and cost of living. Therefore, the internal resources of companies have largely been helpful in financing the floatation of new companies. This has been the history of corporate development in every country. One has merely to look at the practice and experience in this respect in this as well as in other countries. In our country, many new companies in new lines of industries have been brought into existence by the investments of the established or conventional industries. Intercorporate investments as they are called have been recognised as useful and it is not

uncommon for incentives to be granted to promote such investments by way of relief in taxation and by other methods. Such incentives in taxation are given in India, also. I am, therefore, strongly opposed to this new restriction on the development of corporate enterprises. Of course, it is possible for a company to exceed this prescribed limit by a resolution in general meeting and by obtaining the approval of Government. I cannot, however, agree to Government intervention in a purely internal matter.

Payment of Dividends: Clause 57:

Under this clause, a company before it declares dividends for any year must provide not merely depreciation for that year but also all arears of depreciation.

The position today is that companies can declare dividends out of profits without providing for depreciation if it is so thought desirable. It being so, I can appreciate if it is only made necessary that a company can declare dividends out of profits after it provides for the depreciation of that year. To go further and enact that if there are arrears of depreciation which have not been provided for against profits of the previous years, they should also be provided for in the current years profits, will make impossible the declaration of dividends for a fairly long period of time by a new company or even an existing company which has embarked upon a large scheme of expansion. In heavy industries particularly, the period will be much longer. The emphasis today is on the setting up of basic and heavy industries. I may take an example. Supposing a company engaged in a heavy industry after five years of working, makes sufficient profits in the fifth year to enable it to pay some dividend in that year after providing for depreciation in that year. In the previous four years there have not been sufficient profits and, therefore, depreciation has not been provided for in the previous years. After its fifth year, it will make increasing profits each year which will be sufficient not only to provide for current as well as a good deal of all the arrears of past depreciation and also pay dividends continuously from the fifth year onwards. But if this clause is put on the statute book, it may not be possible for such a company to pay dividends even up to a period of ten years. This will make it pretty difficult for attracting capital to new floatations or for financing the expansion of existing industries.

The clause makes a similar provision for making allowances for losses sustained in previous years which is objectionable for the same reasons. I must also point out that if a company does not declare dividend for a fairly long period its credit will be affected. Such a situation will retard the formation of new companies. There are

certain favourable market conditions today for bringing into existence new companies and industries. But I am apprehensive that this position will be entirely changed if the proposal is accepted.

Imposition of Restrictions on shares: Clause 79:

This clause provides that if as a result of transfer of shares in a company, a change taken place in the composition of the Board or constitution of the managing agency, the Central Government may if it is of the opinion that it is prejudicial to public interest restrict voting rights in respect of those shares for a period not exceeding three years. Also, if Government is of the opinion that as a result of transfer of shares a change in the Board or managing agency is likely to take place and that it will be prejudicial to public interest, they may prohibit the transfer of shares for a period not exceeding three years.

The fundamental principle of Company Law is that a company's affairs should be carried on according to the wishes of the majority of the shareholders. Accordingly, if the majority of shareholders whose majority holding is due to transfers of large blocks of shares or otherwise, desire a change in the management, they should be permitted to have it. It is not desirable that Government should interfere with the voting rights or transfer of shares, which will have adverse repercussions on the companies. If the change of management will not be in the interests of the company, there are other safeguards available to prevent it. Firstly, the new management has to be approved by Government. Secondly, the old management if it has a grievance has the power under section 398 of the Act to apply to Court for suitable relief. In the circumstances, I am opposed to this clause which gives more powers to Government to interfere in the affairs of a company.

Donations to Political Parties: Clause 98:

I am strongly opposed to this provision which gives legal sanction for companies to make donations to the political funds of political parties. This matter has been the subject of controversy in many countries. Recently, our courts had also occasion to discuss the pros and cons of this matter. It will be sufficient for my purpose if I refer to some of the objections which are discussed in the judgement itself. "To induce the Government of the day by contributing money to the political funds of the political parties is to adopt the most sinister principle fraught with grave dangers to commercial as well as public standards of administration. Persuasion by contribution of money lowers the standard of administration even in a welfare State or

democracy. To convert convictions and conscience by money is to pervert both democracy and administration. Joint Stock Companies are not intended to be adjuncts to political parties and possible sources of revenues for these parties. It will induce the most unwholesome competition between business companies by introducing the race who could pay more to the political funds of political parties. In that competition business is bound to suffer in the long run. In the bid for political favouritism by the bid of money, the company who will be highest bidder may secure the most unfair advantage over its rival trader companies. It will mark the advent and entry of the voice of the big business in politics and in the political life of the country. The tune of political life is liable in the long run to become the tune of the big trading companies and concerns. They will be bad both for business and for politics. It will be alike bad for public life as well as commercial life."

That such a prohibitory section was in the Act till it was amended by the present ruling party is significant. It may be thought that there is some safeguard if publicity is given to the donations made. The amendment provides that such donations should be made public and not kept secret. It no doubt looks very wise and harmless. But it should also be borne in mind that the publication of payments to the ruling party may carry no danger with it but publication of any payment to parties that oppose the ruling party may carry with it consequences which are too obvious to need dwelling upon. I may add that such a proposal which is fully put to advantage by the ruling party and which has been opposed in the Joint Committee should not be carried through with the majority of the ruling party. It is unfair to the other parties and will also be a blow to democracy.

NEW DELHI; DAHYABHAI V. PATEL
10*th August*, 1960.

III

We are in general agreement with the recommendations of the Joint Committee. We believe that they constitute one more step forward in the direction of realising the aims and objects of the Companies Act, 1956. They provide for greater and more effective control over and voice in the management for share-holders, a higher standard of accounting and auditing and a greater control by the Government over the management of the Company with a view to safeguard the interests of the minority shareholders. We, however, feel that some of the recommendations fall short of the objectives in view and need to be amended.

We regret that the Joint Committee did not accept the principle of prohibiting the corporate bodies from contributing out of their resources to the funds of a political party. Even the countries where common man is in a better position to contribute to the funds of the party of his choice than in India, the corporate bodies are not permitted to contribute to the election funds of a political party. Under conditions prevailing in India any contribution by a prosperous corporate body to the funds of a political party would give an immense advantage in terms of resources to that party and would generate a legitimate fear that money power might be able to influence the results of elections in the country. This fear would all the more be strengthened if a corporate body advances, as a legitimate argument in favour of such contributions out of its funds, a plea that it is necessary to do so in safeguarding and furthering the interests of that corporate body. It is immaterial whether its interests are in fact safeguarded and furthered or not. If the policy of the party to the funds of which contributions are made is not safeguarding the interests of the contributing corporate body and yet that body continues to make the contributions the inferences one may legitimately draw from the action of the corporate body would not be flattering either to the contributing corporate body or to the party that continues to receive such contributions. In the interest of establishing healthy democratic traditions in the country and to give a sense of confidence to the common man that he has an effective voice in choosing the rulers of the land it is very desirable that such contributions are prohibited.

This is necessary also from the point of view of safeguarding the interests of the minority shareholders. Why should even one shareholder be compelled to contribute an amount to the fund of a political party against his will which would have been his but for the decision of the corporate body to make such a contribution? Even the prestige of the political party concerned demands that it should not receive any contribution, howsoever small the amount may be, from any one who is compelled to make that contribution against his will.

The Bill provides that the compensation that may be due to workmen under provisions of Chapter VA of the Industrial Disputes Act, 1947, should be included within the scope of the term "wages" for purposes of Section 530(1)(b) of the principal Act. This sub-section provides that wages should be considered as a preferential charge in case of a winding up. This is a step in the right direction. As long as the workmen have no effective say in the management of the Company it is not fair to put his dues accruing to him under the law in the category of an ordinary debt.

But this laudable purpose of the provision in the Bill is likely to be defeated in many cases unless the maximum limit of these dues to be considered as a preferential charges is not raised simultaneously with the inclusion of compensation in the term wages. We, therefore, believe that in Sub-section (2) of section 530 of the principal Act, the limit should be raised from one thousand rupees to two thousand and five hundred rupees.

We strongly feel that the Government should exercise the powers it possesses under the Companies Act, 1956 to end the managing agency system. The disadvantage in its continuation far outweigh the advantages in its retention. The present trends in the stocks and capital markets seem to indicate developments that are prejudicial to sound promotional activities. The managing agency system is at the root of these developments.

If, however, it is not possible to end this system forthwith, at least steps should be taken to see that there are no loopholes in the provisions in the principal Act limiting the number of companies that can be managed by a managing agent to ten. This principle is accepted by the Joint Committee and accordingly clause 120, a new clause, has been added. According to section 332(4) (b) of the principal Act every member of a managing company whether public or private who is entitled to exercise not less than twenty per cent of the total voting power therein is to be deemed to hold office as managing agent of the managed company. Experience of the working of the Act however indicates that this provision can be and, in fact, is circumvented in certain cases by arrangements whereby an effective control can be exercised by a member of the managing company in that company without holding twenty per cent of the total voting power therein. Such a contingency would defeat the purpose of keeping interlocking of companies within limits. The new clause 120 accordingly reduces the limit of the voting power held from twenty per cent to ten per cent in case of a public company and five per cent in case of a private company.

We are of the view that the limit of ten per cent in the case of a public company is quite safe because the share holdings in such a company are widely dispersed and therefore it is not easy to keep an effective voice in the management of a public company while holding less than ten per cent of the voting power therein. In the case of the private company, however, the situation is different. In private companies shares are held by a closed group of persons, normally the friends and relatives of a key member. It is, therefore, possible for him to so distribute the holdings that even by holding a very nominal percentage of total voting power

in that company he may be able to exercise an effective control over its management. It is, therefore, desirable to provide that a person holding even a nominal voting power in the company should be deemed to hold the office of managing agent of the managed company. We, therefore, recommend that the new clause 120 should be suitably amended to make such a provision.

Clause 9 of the Bill as amended by the Joint Committee empowers the Central Government to grant exemptions to the companies licensed under section 25 of the principal Act from any provisions of the Act. We cannot accept the view that such a general power of exemption is necessary. As the law stands at present non-profit making associations licensed under section 25 of the principal Act have to comply with most of the obligations placed on the company under the Act. We agree that this is not necessary and that the scope of sub-section (6) of section 25 of the principal Act needs to be widened. We are, however, of the view that if these bodies are exempted from the operation of all or any of the sections mentioned in clause 9, lines 28 and 29 on page 5 of the original Bill that would be sufficient for the purpose in view. We, therefore, urge that the power of the Central Government to grant exemptions to the licensed companies should be confined only to the sections mentioned in clause 9, lines 28 and 29 on page 5 of the original Bill.

NEW DELHI;
10*th August*, 1960.

ROHIT M. DAVE
MULKA GOVINDA REDDY
Y. N. JADHAV

IV

We regret that we have to submit this minute of dissent to the Report of the Joint Committee. We very much wished to avoid taking this step. But the points at issue are so important that we will be failing in our duty if we did not place our point of view on record.

The Joint Committee have made some major changes in the draft Bill. These are of a substantive character and also of a highly controversial nature. Our understanding of the terms of reference of the Joint Committee is that it considers the provisions of the Bill, and after reconciling various conflicting views, hammers out a piece of legislation more acceptable to all the sections of the House, but on the basis of the main provisions of the Bill. It is generally outside the scope of the Select Committee to introduce new provisions

which are substantive in character. Inasmuch as during the reference stage the Parliament has had no time to discuss these new clauses, the Select Committee, howsoever representative it may be, is generally not supposed to take upon itself the task of anticipating the views of Parliament on such new clauses. We are, therefore, of opinion that important changes should not have been introduced in the Bill at the Select Committee stage.

Though we have confined our minute of dissent to a few clauses, we have our differences on some other clauses of the Bill also. We note that very wide powers have been taken by Government and other authorities under the Act. In our opinion, the frequency and the multiplicity of sanctions and formalities under company law involve considerable waste of time both of businessmen and of the administration to an extent that is wholly unnecessary. These regulatory provisions do not exist in the company law of any other country. While attempts are being made to simplify, rationalise and streamline other laws and procedures, the position in regard to the company law is that it is getting unnecessarily more complicated. The Companies Act, as it finally emerged from Parliament in 1956, contains 658 sections. While many of these provisions are no doubt more in the nature of prescribing a ritualistic behaviour, it cannot be denied that they constitute hardship and expense to the companies in their day-to-day working. The amendments proposed now, which deal with more than 200 sections, contain some directed to ease the situation. On the other hand, the amendments, on the whole, will tend to make the company law more irksome. We should not also forget that such a piece of massive legislation with such large regulatory powers to Government is bound to come in the way of foreign collaboration and investment in India.

Clause 57:

This clause provides that before a dividend can be declared for any year not merely depreciation for that year but also all arrears of depreciation must be provided.

We are apprehensive that if this provision is passed, new companies and existing companies which embark on schemes of expansion would be unable to declare any dividends during the first few years of incorporation or expansion as the case may be. It is perhaps reasonable to provide that a company should provide out of the current profits of any year for which dividends are to be declared, depreciation of that year, though even that will make it impossible for new companies to declare dividends during the first

few years. The clause, however, goes even further. A new company may be able to pay dividend out of the profits, say, in its fourth year of working, after providing depreciation for that year. It may, however, not be able to pay dividends for a few more years if past arrears of depreciation are also to be deducted before dividends can be paid. The clause makes a similar provision for making allowances for losses sustained in previous years. We wish to point out that non-declaration of dividends for quite some years will affect the credit of a company. It will also restrict the formation of new companies. It will be very difficult to attract new capital if the subscribers know beforehand that for ten years or so they will get no dividend. Today the climate for investment and for the floatation of new companies is good because of certain favourable market conditions. This climate, we are afraid, will be adversely affected if the proposal is accepted.

Clause 70:

This clause gives power to Government to direct a special audit by a special auditor of the company's accounts for any period under certain instances.

The special auditor will be appointed if Government is of the opinion that the affairs of the company are not being managed on sound business principles, that the company is being managed in a manner likely to cause injury to the interests of the trade or industry to which it pertains or that the financial position of the company is such as to endanger its solvency. The purposes for which the special auditor is to be appointed are already taken care of by other safeguards provided in the Act. The shareholders' rights are considerable under the law. Besides, Government can launch an investigation into the affairs of a company if the members of the company have not been given all the information with respect to its affairs. Minority shareholders can seek relief in Court for oppression and mismanagement under sections 397 and 398. Section 408 gives powers to Government to appoint directors on the Board in order to prevent the affairs of the company being conducted in a manner oppressive to the members or prejudicial to the interests of the company. Government have power to prevent a change in the Board of Directors which is likely to affect the affairs of the company on application by shareholders. There are remedies available to Government under other Acts also, as for instance, the Industries (Development and Regulation) Act, 1951, when the company's affairs are in a bad state. There is no necessity, therefore, for the appointment of a special auditor who will have the same powers and duties

as the auditor of the company. When the auditor of the company has already discharged his duties, it is not clear why a special auditor should again be appointed. It is unfair to the auditor of the company. It is also unfair to provide that the expenses of the special auditor should be borne by the company.

Clause 99:

Where after 1st April, 1956, any managing agent has resigned and has been appointed as sole selling agent of the managed company, the sole selling agency whether taken in his name or in association with other persons for his benefit should be approved by the Central Government within a period of six months from the commencement of the Amendment Act.

The clause further gives power to Government to require information regarding the terms and conditions of appointment of the sole selling agents and to vary them if they are prejudicial to the interests of the company. It also gives power to Government to treat one person as sole selling agent where there are more than one selling agent for the company in any area.

We are of the opinion that no retrospective operation should be given to this provision and that such persons who have already been appointed as sole selling agents in accordance with the law after obtaining the sanction of the general meeting should be allowed to continue.

The appointment of a sole selling agent depends upon the sales techniques appointed by different companies. Each company has its own problems and the norms and conditions applied to one company cannot be applied to another company. The directors are the best person to choose the selling agents for any area after taking into consideration the standing, capacity, integrity and the suitability of the person. Other factors taken into consideration are the contacts of the person and his business experience. The appointment of a sole selling agent is a matter which does not involve any public policy to require the intervention of Government. It is not also like managing agency remuneration which is fixed once in five or ten years. It is a day-to-day matter of internal administration and sole selling agents may have to be changed now and then to augment the sales. After all, the appointments are also approved by the company in general meeting. Officers of Government will not have adequate knowledge of such matters which require to be weighed in the appointment of a sole selling agent.

Another important consideration is that almost all big manufacturing companies will have to appoint selling agents and if all these appointments are to be considered by Government, thousands of applications will have to be dealt with, which will put an enormous and unnecessary strain on the administration. These applications will amount to a few thousands and as the number of companies increases as it is bound and ought to, there will be a further increase in the applications to be dealt with by Government. All this means delay in the disposal of applications. In the matter of export promotion and such things delay will be most unfortunate. We are of the opinion that this question should be left to be decided as hitherto by the directors and the company in general meeting.

Clause 120:

This is a new clause which seeks to amend section 332 of the Companies Act which provides that no person shall be managing agent of more than ten companies. Under the clause, where the managing agent of a company is itself a company, every person who is a director and where it is a public company, every member entitled to not less than 10 per cent. of the total voting power in the company and where it is a private company, every member entitled to not less than 5 per cent. of the total voting power in the company will be deemed to be holding the office of managing agent.

Under the existing section 332, it is only in cases when a member of a managing agency company whether public or private holds more than 20 per cent. of the total voting power, will he be deemed to be holding the office of managing agent. This has been reduced to ten per cent. in the case of a managing agency public company and to five per cent. in the case of a managing agency private company. Thus, where a managing agency private company manages, say, ten companies, any member thereof holding 5 per cent. of the voting power in the company will also be deemed to be managing agent of ten companies and precluded from acting as managing agent of any other company or being a member of any other managing agency private company with a holding exceeding 5 per cent. in that company. An employee of the private company who may be a member holding 5 per cent. of the shares but who has no power or influence over the conduct of the affairs of the private company will also be deemed to be holding the office of a managing agent. This is going too far. In our opinion, unless any member of a company has a substantial interest in the company which should not be less than 10 per cent. in the case of a private company and 20 per cent. in the

case of a public company, he should not be considered to be holding the office of a managing agent. Further, the Explanation provides that a director or member will include any person in accordance with whose directions or instructions, the director or member as the case may be, is in the opinion of the Central Government accustomed to act. This may often lead to anomalous results as they impose legal obligations of an onerous character on person who may really have no part or lot to play in the affairs of the company.

Clause 136:

The proposal makes a major change in the existing law and according to it no company can normally make investments, the aggregate of which in other bodies corporate will exceed 30 per cent. of the subscribed capital of the investing company.

This proposal should not have been made particularly in the present circumstances. Because of high taxation and other factors, individual savings today are negligible. What expansion there has been in the corporate sector has been achieved more by the investments of companies. Indeed, the history of the last few years has proved that new company formation and consequent industrial expansion have to a large extent been made possible by inter-corporate investments. In our country, many of the new lines of industries have been developed as a result of the investments by the conventional industries. Inter-corporate investments have acquired a new significance and have been recognised as useful and indeed incentives are given for such investments in taxation and in other matters. We feel that any restriction of the nature proposed will arrest the further development of our economy. It may be said that investments in excess of the limits prescribed may be made by a resolution of the investing company in general meeting and the approval of Government. But we see no reason why any restrictions should be placed at all and why Government approval should be deemed necessary in such matters of internal administration.

NEW DELHI;
10*th August*, 1960.

BABUBHAI M. CHINAI
P. D. HIMATSINGKA
G. D. SOMANI.

V

We are constrained to append our minutes of dissent as we do not agree with some of the conclusions of the Joint Committee.

2. At the outset, we would like to point out that the Bill before the Joint Committee had a limited scope. The working of the Companies Act, 1956 had revealed certain administrative difficulties. The Sastri Committee had also mainly gone into these questions and made recommendations for amending the Act to overcome these difficulties. The amending Bill had in fact this limited scope although there is a slight departure from some of the recommendations. The wider and basic question before the country of preventing concentration of economic wealth as accepted by Parliament in the Industrial Policy Resolution of 1956 and the Second Plan and as provided for in the Directive Principles of the Constitution has yet to be tackled. It will be necessary in our opinion to undertake a full and comprehensive enquiry for achieving the objective and consequent recasting of the Companies Act.

3. Incidentally, it was good that the question of difference between the private and public companies was taken up for consideration in this Bill itself although we are of opinion that the amendment agreed to by the Joint Committee does not go far enough *e.g.* claust 14 (old clause 15). In our opinion there is no valid reason for any distinction between private and public companies and all restrictions applying to public companies must apply to private companies also.

4. The provision in new clause 70 is a welcome one. Under this, the Government is empowered to order a special audit whenever it is satisfied that the affairs of the company are not managed properly. On the other hand, the Committee's amendment of the original clause 104 (present 99) of the amending Bill is in our opinion a retrograde one. The original clause completely banned the ex-managing agents being appointed the sole selling agents of a company for three years in order to prevent the phenomenon of managing agents relinquishing their agency and becoming sole selling agents. This is found to be more lucrative. The three years period was provided for so that at the end of the period, the ex-managing agents would not be in a

position to influence decisions in this regard. Actually, it was necessary to increase the period from three years to five years. Instead, Committee has allowed appointments within three years subject to approval of the Government.

5. The deletion of the original clause 58 in our opinion is not correct. The clause provided that publication of chairman's speeches at the company's cost was undesirable. The Committee had felt that chairman's speech was useful and any obligation to publish summary of the proceedings of the meeting would entail unnecessary expenditure. Actually, when it is known that the shareholders of company are widely dispersed and it is not possible for many of them to attend such meetings, it was necessary to make it obligatory to publish the summary of the proceedings in order to enable the shareholders to take intelligent and informed interest in the affairs of the company.

6. The original clause 179 of the amending Bill (present clause 181) seeks to include retrenchment compensation payable to the worker in being included in the items of preferential payments under section 530 of the original Act when a company is wound up. This is good as far as it goes. But the proviso to sub-section (2) of section 530 of the original Act which puts a ceiling of Rs. 1,000 for such preferential payments, in our opinion, should have been enhanced to at least Rs. 2,500 if not altogether removed. This is particularly important today when it is remembered that the cost of living has increased considerably since 1956 when the Act came into force. Besides, increased benefit should be contemplated in view of the new addition.

7. In our opinion the omissions of certain items contained in the original Schedule IA are not warranted.

8. We have to strongly protest against legalising contributions to political parties. It is brought as an amendment to section 293 of the original Act by inclusion of sub-sections 6 and 7. The clause in question is 98(b) [old clause 103(b)]. It provides as follows: "Every company shall disclose in its profits and loss account any amount contributed under clause (e) of sub-section 1 to any political party or for any political purpose.....giving particulars of total amount contributed and the name of the party, individual or body to whom such amount has been contributed". Section 293(e) authorised contributions up to Rs. 25,000 by Board of Directors. The practice of contributing to political parties have come into vogue and this clause legalises it. Some high courts have expressed themselves against

this practice. It will lead to buttressing certain political parties by financial interests. It is no argument to state that Government is free to take action against such companies also. It will lead to thwarting the free democratic development. Certain monopolies will have a free access to Government and connected activities. How does it serve the interest of the shareholders? Is it necessary for companies to make this type of contribution to the ruling parties? We believe that this clause is pregnant with mischievous potentialities. Hence this clause, more particularly sub-clause (b), should be deleted.

NEW DELHI; K. T. K. TANGAMANI.
11*th August*, 1960. P. RAMAMURTI.

VI

While I am in general agreement with the numerous changes effected by the Joint Select Committee in the Bill, I consider it necessary to append my minute of dissent on a few clauses for reasons mentioned hereunder.

1. *Clause* 4, *amending Section* 6:

Section 6 of the Act deals with the meaning of "relative" with reference to Schedule 1A of the Act.

I am of the opinion that in the Bill as it has emerged from the Joint Select Committee, the following items in Schedule 1A on page 103 should be deleted, being—

Item 6. Father's father.

Item 7. Father's mother.

Item 8. Mother's mother.

Item 9. Mother's father.

Item 13. Son's daughter's husband.

Item 16. Daughter's son's wife.

Item 18. Daughter's daughter's husband.

Item 35. Father's sister's husband.

Item 36. Father's brother's wife.

Item 37. Mother's brother's wife.

Item 38. Mother's sister's husband.

I consider these are too remote relatives to be taken into consideration for the purpose section 6 has in view.

2. *Clause* 14, *inserting Section* 43*A*:

New Section 43A has been completely overhauled by the Joint Committee which was perhaps inevitable having regard to the purpose it was intended to serve. Of necessity, this new clause has become extremely complex and may impose a burden of work out of all proportions to the purpose it might serve, particularly in case of small companies, say with a paid up capital of less then Rs. 5 lacs.

I am, therefore, of the view that new section 43A should not apply to cases of private companies where the paid up capital is under Rs. 5 lacs.

3. *Clause* 25, *amending Section* 84:

Section 84 deals with the issue of share certificates. The Joint Committee has sought to tighten up this clause so that there might be exercised a salutary check on issue of counterfeit share certificates. Unfortunately it appears that due consideration has not been given to numerous cases of *bona fide* holders who may have lost or misplaced their share certificates. Discretion is left to the company in demanding the type and character of evidence for proving such loss. I am aware of one company where it insisted upon advertisement of loss being inserted in not less than 7 newspapers for three consecutive days. The cost of such advertisements would be so prohibitive that smaller shareholders would prefer to lose their small investments rather than pursue the question of having duplicate share certificates issued. In the Companies (Issue of Share Certificates) Rules, 1960, issue of March, 1960 rules have been framed for the purpose of issue of duplicate share certificates but here again I regret no account is taken of the difficulties of genuine shareholders mentioned above.

I am, therefore, of the opinion that this question requires to be modified by inclusion of the following conditions on compliance of which duplicate share certificates may be issued, namely—

(a) production by the applicant of an affidavit, as to loss or destruction of the certificate;

(b) execution of an indemnity bond by the applicant in such form as the Board of Directors may prescribe, indemnifying the Company against any future claim; and

(c) insertion of advertisements in such newspapers as the Board may direct, provided that the cost of such insertion shall not exceed 10 per cent of the face value of such shares or Rs. 500/- whichever is less.

4. *Clause* 44, *amending Section* 172:

The Bill seeks to dispense with advertisement or statement of material facts referred to in Section 173 where a notice of meeting is given by advertisement in a newspaper.

I am of the opinion that it is not enough to mention in the advertisement that the statement has been forwarded to the members of the Company. This section therefore requires to be amended to make it obligatory on the company to insert in the advertisement a short summary of the statement of material facts referred to in section 173.

5. *Clause* 59, *amending Section* 209:

Section 209 deals with books of account to be kept by company. In order to obviate the constant necessity of informing the Registrar in certain cases, it appears to me that a further proviso should be added as follows:—

"Provided further where books of account are temporarily shifted for the purpose of litigation in court or for production before an authority requiring production of such books under any law for the time being in force, no such intimation may be given to the Registrar".

6. *Clause* 103, *amending Section* 293:

Section 293 among other matters relates to political contribution. I am opposed to political contributions, being given by companies as they tend to influence Government policies in favour of such companies wittingly or unwittingly. I quote extracts from the case of the Tata Iron and Steel Company wherein Mr. Chief Justice Chhagla observed as under in an application made by the Tata Iron and Steel Company for amendment of their Memorandum of Association:—

"It is with considerable uneasiness of mind and sinking feeling in the heart that we approach this problem of the Tata Iron & Steel Company Ltd., that they should be

permitted by amendment of the Memorandum of Association to make contribution to political parties..... Democracy in this country is nascent and it is necessary that democracy should be looked after, attended and nurtured so that it should rise to its full and proper stature. Therefore, any proposal or suggestion which is likely to strangle democracy, almost in its cradle must be looked at not only with a considerable hesitation, but a great deal of suspicion.....The discussion and debate must be conducted honestly and objectively and the decisions must be arrived at on merits without being influenced or actuated by extraneous circumstances."

He further observed, "the least that Parliament can do is at least to require the sanction of the Court before any large amount is paid by the companies to the fund of political parties. But it is not for us to legislate, nor is it for us to lay down policy. But having had this case before us and our attention having been drawn to the possibilities of the evils attendant on the powers exercised by the companies, we thought it our duty to draw the attention of the Parliament to the necessity of remedial measures being immediately undertaken to curb and control this evil".

I am, therefore, strongly of the view that contributions by companies to political parties should be completely prohibited. However, without abandoning my fundamental objection to political contributions from companies, I think the least that this Hon'ble House may do is to make such contributions dependent on sanction of the High Court.

7. *Clause* 124, *amending Section* 348:

Section 348 deals with managing agents remuneration, while section 349 deals with determination of net profits and section 350 with ascertainment of depreciation. Section 616 of the Companies Act says that the provision of this Act shall apply "to companies engaged in the generation or supply of electricity except in so far as the said provisions are inconsistent with the provisions of the Electricity (Supply) Act, 1948, and the Indian Electricity Act, 1910. The Electricity (Supply) Act, 1948 has a separate provision for computing the managing agents remuneration as also "the clear profit" and "reasonable return" under the sixth Schedule of the Act. Paragraph VI of the Sixth Schedule lays down the principles

on which depreciation has to be computed. I am of the view that for the sake of further clarity and removal of doubt it should be mentioned in appropriate place that these sections 348, 349 and 350, do not apply to Electricity Supply Undertakings to which Electricity (Supply) Act, 1948 and the Indian Electricity Act, 1910 apply.

8. *Clause* 181, *amending Section* 530:

My last submission is with reference to the preferential payments in winding up proceedings. Section 530 fixed the priority of debtors. Sub-section (1) (b) gives second priority to salary and wages of the employees to the extent of four months only. I am unable to appreciate why the salaries and wages of poor workers should not be made payable at least for a period of 12 months prior to the commencement of winding up. I trust the House will look into these matters when the Bill as it has emerged from the Joint Committee is placed before it.

NEW DELHI; NAUSHIR BHARUCHA.
12th August, 1960.

Bill No. 37B of 1959

THE COMPANIES (AMENDMENT) BILL, 1959

(AS REPORTED BY THE JOINT COMMITTEE)

(WORDS SIDE-LINED OR UNDERLINED INDICATE THE AMENDMENTS SUGGESTED BY THE COMMITTEE; ASTERISKS INDICATE OMISSIONS)

A

BILL

further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

1. This Act may be called the Companies (Amendment) Act, 1960. Short title.

1956. **2.** In section 2 of the Companies Act, 1956 (hereinafter referred to as the principal Act),— Amendment of section 2.

(*a*) in clause (3), in sub-clause (*c*),—

(*i*) the word "and" at the end of paragraph (*i*) shall be omitted;

(*ii*) after paragraph (*ii*), the following paragraph shall be inserted, namely:—

"(*iii*) any subsidiary of the other body corporate referred to in paragraph (*ii*) above: *

Provided that where the body corporate is the managing agent of the other body corporate referred to in paragraph (*ii*) above, a subsidiary of such other body corporate shall not be an associate in relation to the managing agent aforesaid; and";

(*b*) in clause (*4*), in sub-clause (*b*),—

(*i*) the word "and" at the end of paragraph (*i*) shall be omitted;

(*ii*) after paragraph (*ii*), the following paragraph shall be inserted, namely:—

"(*iii*) any subsidiary of the other body corporate referred to in paragraph (*ii*) above:*

Provided that where the body corporate is the secretaries and treasurers of the other body corporate referred to in paragraph (*ii*) above, a subsidiary of such other body corporate shall not be an associate in relation to the secretaries and treasurers aforesaid; and";

(*c*) in clause (*7*), for the words "does not include a corporation sole", the following words shall be substituted, namely:—

"does not include—

(*a*) a corporation sole;

(*b*) a co-operative society registered under any law relating to co-operative societies; and

(*c*) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf;";

(*d*) for clause (*9*), the following clause shall be substituted, namely:—

'(*9*) "branch office" in relation to a company means—

(*a*) any establishment described as a branch by the company; or

(*b*) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; or

(*c*) any establishment engaged in any production, processing or manufacture,

but does not include any establishment specified in any order made by the Central Government under section 8;';

(*e*) for clause (*11*), the following clause shall be substituted, namely:—

'(*11*) "the Court" means,—

(*a*) with respect to any matter relating to a company (other than any offence against this Act), the Court

having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

(*b*) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence;';

(*f*) in clause (*26*),—

(*a*) for the words "any powers of management", the words "substantial powers of management" shall be substituted;

(*b*) the following provisos shall be added at the end, namely:—

"Provided that the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management:

Provided further that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors;";

(*g*) for clause (*30*), the following clause shall be substituted, namely:—

'(*30*) "officer" includes any director, managing agent, secretaries and treasurers, manager or secretary, and also includes—

(*a*) where the managing agent, the secretaries and treasurers or the secretary is or are a firm, any partner in the firm;

(*b*) where the managing agent or the secretaries and treasurers is or are a body corporate, any director or manager of the body corporate;

(c) where the secretary is a body corporate, any director, managing agent, secretaries and treasurers or manager of the body corporate;

but, save in sections 477, 478, 539, 543, 545, 621, 625 and 633 does not include an auditor;';

(*h*) in clause (*33*), for the words, brackets and figures "sub-section (*1*) of section 549 and sub-section (*3*) of section 550" occurring at both the places, the words, brackets and figures "sub-section (*3*) of section 550, section 552 and sub-section (*3*) of section 555" shall be substituted;

(*i*) in clause (*36*), for the words "any prospectus,", the words "any document described or issued as a prospectus and includes any" shall be substituted;

(*j*) for clause (*45*), the following clause shall be substituted, namely:—

'(*45*) "secretary" means any individual, firm or body corporate appointed to perform the duties which may be performed by a secretary under this Act and any other purely ministerial or administrative duties;'.

Amendment of section 4.

3. In section 4 of the principal Act,—

(*a*) in sub-section (*1*), for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) that other—

(*i*) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

(*ii*) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or";

(*b*) in sub-section (*2*), for clause (*c*), the following clause shall be substituted, namely:—

"(*c*) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.";

(*c*) after sub-section (*6*), the following sub-section shall be inserted, namely:—

"(*7*) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India.".

Substitution of new section for section 6.

4. For section 6 of the principal Act, the following section shall be substituted, namely:—

Meaning of "relative".

"6. A person shall be deemed to be a relative of another if, and only if,—

(*a*) they are members of a Hindu undivided family; or

(*b*) they are husband and wife; or

(*c*) the one is related to the other in the manner indicated in Schedule IA.".

Amendment of section 8

5. In section 8 of the principal Act,—

(*a*) the words "not being a banking or an insurance company" shall be omitted;

(*b*) for the words "any production or manufacture", the words "any establishment engaged in any production, processing or manufacture" shall be substituted.

Amendment of section 17

6. In section 17 of the principal Act, for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) The Court shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before the Court and state his objections and suggestions, if any, with respect to the confirmation of the alteration.".

Amendment of section 18

7. In section 18 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) A certified copy of the order of the Court made under sub-section (*5*) of section 17 confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the Registrar who shall register the same and certify the registration under his hand within one month from the date of the filing of such documents.";

(*b*) in sub-section (*4*), after the word "documents", the words "or for the registration of the alteration" shall be inserted.

Amendment of section 19.

8. In section 19 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) If the documents required to be filed with the Registrar under section 18 are not filed within the time allowed under that section, such alteration and the order of the Court made under

sub-section (5) of section 17 and all proceedings connected therewith, shall, at the expiry of such period, become void and inoperative:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.".

Amendment of section 25.

9. In section 25 of the principal Act,—

(*a*) for sub-section (*6*), the following sub-section shall be substituted, namely:—

'(*6*) It shall not be necessary for a body to which a licence is so granted to use the word "Limited" or the words "Private Limited" as any part of its name and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the direction, be exempt from such of the provisions of this Act as may be specified therein.

(*b*) for sub-section (*8*), the following sub-section shall be substituted, namely:—

"(*8*) (*a*) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.

(*b*) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (*a*).

(*c*) In according the approval referred to in clause (*a*), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(*d*) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (*a*) to (*g*) of sub-section (*1*) of section 17. the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.".

Amendment of section 29

10. In section 29 of the principal Act, the following proviso shall be added at the end, namely:—

"Provided that nothing in this section shall be deemed to prevent a company from including any additional matters in its

articles in so far as they are not inconsistent with the provisions contained in the Form in any of the Tables C, D and E, adopted by the company.".

Amendment of section 31.

11 In section 31 of the principal Act.—

(*a*) in sub-section (*1*), the following proviso shall be added at the end, namely:—

"Provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government.";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) Where any alteration such as is referred to in the proviso to sub-section (*1*) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.".

Amendment of section 38

12. In section 38 of the principal Act, for the proviso, the following proviso shall be substituted, namely:—

"Provided that this section shall not apply—

(*a*) in any case where the member agrees in writing either before or after a particular alteration is made, to be bound by the alteration; or

(*b*) in any case where the company is a club or the company is any other association and the alteration requires the member to pay recurring or periodical subscriptions or charges at a higher rate although he does not agree in writing to be bound by the alteration.".

* * * *

Amendment of section 41.

13. In section 41 of the principal Act, in sub-section (*2*), for the word "agrees", the words "agrees in writing" shall be substituted.

Insertion of new section 43A.

Private company to become public company in certain cases.

14. After section 43 of the principal Act, the following section shall be inserted, namely:—

'43A. (*1*) Save as otherwise provided in this section, where not less than twenty-five per cent. of the paid-up share capital of a private company having a share capital, is held by one or more bodies corporate, the private company shall,—

(*a*) on and from the date on which the aforesaid percentage is first held by such body or bodies corporate, or

(*b*) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1960, on and from the expiry of the period of three months from the date of such commencement unless within that period the aforesaid percentage is reduced below twenty-five per cent. of the paid-up share capital of the private company,

become by virtue of this section a public company:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (*iii*) of sub-section (*1*) of section 3 and the number of its members may be, or may at any time be, reduced below seven:

Provided further that in computing the aforesaid percentage, account shall not be taken of any share in the private company held by a banking company, if, but only if, the following conditions are satisfied in respect of such share, namely:—

(*a*) that the share—

(*i*) forms part of the subject-matter of a trust,

(*ii*) has not been set apart for the benefit of any body corporate, and

(*iii*) is held by the banking company either as a trustee of that trust or in its own name on behalf of a trustee of that trust; or

(*b*) that the share—

(*i*) forms part of the estate of a deceased person,

(*ii*) has not been bequeathed by the deceased person by his will to any body corporate, and

(*iii*) is held by the banking company either as an executor or administrator of the deceased person or in its own name on behalf of an executor or administrator of the deceased person;

and the Registrar may, for the purpose of satisfying himself that any share is held in the private company by a banking company as aforesaid, call for at any time from the banking company such books and papers as he considers necessary.

(*2*) Within three months from the date on which a private company becomes a public company by virtue of this section, the company shall inform the Registrar that it has

become a public company as aforesaid, and thereupon the Registrar shall delete the word "Private" before the word "Limited" in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association.

(3) Sub-section (3) of section 23 shall apply to a change of name under sub-section (2) as it applies to a change of name under section 21.

(4) A private company which has become a public company by virtue of this section shall continue to be a public company until it has with the approval of the Central Government and in accordance with the provisions of this Act, again become a private company.

(5) If a company makes default in complying with sub-section (2), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(6) Nothing in this section shall apply—

(a) to a private company of which the entire paid-up share capital is held by another single private company or by one or more bodies corporate incorporated outside India; or

(b) to any other private company if, but only if, each of the following conditions is satisfied, namely:—

(i) that the body corporate or each of the bodies corporate holding shares in the private company is itself a private company (hereinafter in this section referred to as a shareholding company),

(ii) that no body corporate is the holder of any shares in any such shareholding company,

(iii) that the total number of shareholders of the shareholding company, or as the case may be of all the shareholding companies together with the individual shareholders [not including the persons referred to in sub-clause (b) of clause (iii) of sub-section (1) of section 3], if any, of the private company, does not exceed fifty.

(7) Every shareholding company shall, as soon as may be, inform the private company referred to in clause (*b*) of sub-section (*6*) about every change in the membership of the share-holding company taking place by a change in the number of its individual shareholders or by any body corporate becoming the holder of any of its shares.

(*8*) Every private company having a share capital shall, in addition to the certificate referred to in sub-section (*2*) of section 161, file with the Registrar along with the annual return a second certificate signed by both the signatories of the return, stating either—

(*a*) that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, no body or bodies corporate has or have held twenty-five per cent or more of its paid-up share capital, or

(*b*) that though since the aforesaid date one or more bodies corporate have held twenty-five per cent or more of its paid-up share capital, the provisions of this section do not apply to it because it is a private company referred to in clause (*a*) or clause (*b*) of sub-section (*6*).'.

Amendment of section 49.

15. In section 49 of the principal Act,—

(*a*) in sub-section (*1*), after the words, brackets and figures "sub-sections (*2*) to (*5*)", the words "or any other law for the time being in force" shall be inserted;

(*b*) in sub-section (*2*), the words "expressly described as a nominee of the company" shall be omitted;

(*c*) in sub-section (*5*), after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a Scheduled Bank, being the bankers of the company, shares or securities, in order to facilitate the* transfer thereof:*

Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a Scheduled Bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the

expiry of that period, have the shares or securities retransferred to it from the State Bank of India or the Scheduled Bank or, as the case may be, again hold the shares or securities in its own name; or";

(*d*) in sub-section (*6*), for the words "with a Scheduled Bank", the words "with the State Bank of India or a Scheduled Bank" shall be substituted.

Amendment of section 53

16. In section 53 of the principal Act, in sub-section (*2*), in clause (*b*), the words "unless the contrary is proved," shall be omitted.

Amendment of section 60.

17. In section 60 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and sub-sections (*1*) and (*2*) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.".

Amendment of section 62

18. In section 62 of the principal Act, in the proviso to sub-section (*1*), the words, brackets and letter "clause (*b*) of" shall be omitted.

Amendment of section 63.

19. In section 63 of the principal Act, in sub-section (*2*) in clause (*b*), the words, brackets and letter "clause (*b*) of" shall be omitted.

Amendment of section 73.

20. In section 73 of the principal Act, in sub-section (*1*),—

(*a*) for the words "three weeks" occurring at both the places, the words "four weeks" shall be substituted; and

(*b*) for the words "six weeks" the words "seven weeks" shall be substituted.

Amendment of section 75.

21. In section 75 of the principal Act, in sub-section (*1*), for clause (*c*), the following clause shall be substituted, namely:—

"(*c*) file with the Registrar—

(*i*) in the case of bonus shares, a return stating the number and nominal amount of such shares comprised in the allotment and the names, addresses and occupations of the allottees and a copy of the resolution authorising the issue of such shares;

(*ii*) in the case of issue of shares at a discount, a copy of the resolution passed by the company authorising such

issue together with a copy of the order of the Court sanctioning the issue and where the maximum rate of discount exceeds ten per cent, a copy of the order of the Central Government permitting the issue at the higher percentage.".

Amendment of section 76.

22. In section 76 of the principal Act, in sub-section (*2*), for the words "any of its capital moneys", the words "any of its moneys" shall be substituted.

Amendment of section 80.

23. In section 80 of the principal Act,—

(*a*) for the words "the capital redemption reserve fund" wherever they occur, the words "the capital redemption reserve account" shall be substituted;

(*b*) in sub-section (*4*), for the word and figures "section 601", the word and figures "section 611" shall be substituted.

Amendment of section 81.

24. In section 81 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "Where at any time subsequent to the first allotment of shares in a company it is proposed to increase the subscribed capital of the company by the issue of new shares, then, subject to any directions to the contrary which may be given by the company in general meeting, and subject only to those directions—", the following words shall be substituted, namely:—

"Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, the Board of directors decides to increase the subscribed capital of the company by allotment of further shares, then,—"

(*ii*) in clause (*a*), for the word "new", the word "further" shall be substituted;

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-section (*1*), the further shares aforesaid may be offered to any persons [whether or not those persons include the persons

referred to in clause (*a*) of sub-section (*1*)] in any manner whatsoever—

(*a*) if a special resolution to that effect is passed by the company in general meeting, or

(*b*) where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the Chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting and the Central Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company.";

(*c*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) Nothing in this section shall apply—

(*a*) to a private company; or

(*b*) to the increase of the subscribed capital of a public company caused by the conversion of debentures issued or loans raised by the company into shares in the company:

Provided that the terms of issue of such debentures or the terms of such loans include a term providing for an option to exchange such debentures or loans for shares in the company and such term—

(*a*) has been approved by a special resolution of the company before the issue of the debentures or the raising of the loans; and also

(*b*) either has been approved by the Central Government before the issue of the debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf.".

Amendment of section 84.

25. Section 84 of the principal Act shall be re-numbered as sub-section (*1*) of that section and after that sub-section as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) A certificate may be renewed or a duplicate of a certificate may be issued if such certificate—

(*a*) is proved to have been lost or destroyed, or

(*b*) having been defaced or mutilated or torn is surrendered to the company.

(3) If a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to ten thousand rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

(4) Notwithstanding anything contained in the articles of association of a company, the manner of issue or renewal of a certificate or issue of a duplicate thereof, the form of a certificate (original or renewed) or of a duplicate thereof, the particulars to be entered in the register of members or in the register of renewed or duplicate certificates, the form of such registers, the fee on payment of which, the terms and conditions, if any (including terms and conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence) on which a certificate may be renewed or a duplicate thereof may be issued, shall be such as may be prescribed.".

* * * * *

Substitution of new section for section 106.

26. For section 106 of the principal Act, the following section shall be substituted, namely:—

Alteration of rights of holders of special classes of shares.

"106. Where the share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class—

(*a*) if provision with respect to such variation is contained in the memorandum or articles of the company, or

(*b*) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.".

Amendment of section 111.

27. In section 111 of the principal Act,—

(*a*) in sub-section (2), for the words "If, in pursuance of any such power, a company refuses", the words "If a company refuses, whether in pursuance of any power under its articles or otherwise," shall be substituted;

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) Every appeal under sub-section (*3*) shall be made by a petition in writing and shall be accompanied by such fee not exceeding fifty rupees as may be prescribed by the Central Government.";

(*c*) in sub-section (*5*), for the word "forthwith", the words "within ten days of the receipt of the order" shall be substituted;

(*d*) after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*5A*) Before making an order under sub-section (*5*) on an appeal against any refusal of the company to register any transfer or transmission, the Central Government may require the company to disclose to it the reasons for such refusal, and on the failure or refusal of the company to disclose such reasons, that Government may, notwithstanding anything contained in the articles of the company, presume that the disclosure, if made, would be unfavourable to the company.";

(*e*) after sub-section (*8*), the following sub-section shall be inserted, namely:—

"(*9*) If default is made in giving effect to the order of the Central Government within the period specified in sub-section (*5*) or to a direction of that Government given under the proviso to sub-section (*8*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day after the first during which the default continues.".

Amendment of section 113.

28. In section 113 of the principal Act, in sub-section (*1*), for the words "three months after the application", the words "two months after the application" shall be substituted.

Amendment of section 125.

29. In section 125 of the principal Act, in sub-section (*1*), the following proviso shall be added at the end, namely:—

"Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within seven days next following the expiry of the said period of twenty-one days if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.".

Amendment of section 138.

30. In section 138 of the principal Act,—

(*a*) in sub-section (*1*), for the words "in whole or in part", the words "in full" shall be substituted;

(*b*) in sub-section (*3*), the words "in whole or in part, as the case may be," shall be omitted.

* * * * *

Amendment of section 141.

31. In section 141 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) The Court, on being satisfied—

(*a*) that the omission to file with the Registrar the particulars of any charge created by a company or of any charge subject to which any property has been acquired by the company or of any modification of any such charge or of any issue of debentures of a series, or that the omission to register any charge within the time required by this Part, or that the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required by this Part, or that the omission or mis-statement of any particular with respect to any such charge, modification or issue of debentures of a series or with respect to any memorandum of satisfaction or other entry made in pursuance of section 138 or 139, was accidental or due to inadvertance or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company; or

(*b*) that on other grounds it is just and equitable to grant relief;

may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, direct that the time for*** the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.".

Amendment of section 142.

32. In section 142 of the principal Act, in sub-section (*1*), in clause (*b*), the words "in whole or in part", shall be omitted.

Amendment of section 145.

33. In section 145 of the principal Act, for the words "any charge created before the commencement of this Act", the words

"any charge created before, and remaining unsatisfied at, the commencement of this Act," shall be substituted.

Amendment of section 147.

34. In section 147 of the principal Act,—

(*a*) in sub-section (*1*),—

(*1*) in clause (*a*), after the words "its name", the words "and the address of its registered office" shall be inserted:

(*2*) in clause (*c*),—

(*i*) after the words "its name", the words "and the address of its registered office" shall be inserted;

(*ii*) the word ", advertisements" shall be omitted;

(*iii*) for the words "and in all bills of exchange", the words "and also have its name so mentioned in all bills of exchange" shall be substituted;

(*b*) in sub-section (*2*), after the words "its name" wherever they occur, the words "and the address of its registered office" shall be inserted;

(*c*) in sub-section (*4*), in clause (*b*),—

(*i*) the word ", advertisement" shall be omitted;

(*ii*) for the words "its name is", the words "its name and the address of its registered office are" shall be substituted.

Amendment of section 149.

35. In section 149 of the principal Act, sub-section (*8*) shall be omitted.

* * * * *

Amendment of section 155.

36. In section 155 of the principal Act,—

(*a*) in sub-section (*1*), for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) the name of any person—

(*i*) is without sufficient cause, entered in the register of members of a company, or

(*ii*) after having been entered in the register, is, without sufficient cause, omitted therefrom; or";

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*5*) The provisions of sub-sections (*1*) to (*4*) shall apply in relation to the rectification of the register of

debenture holders as they apply in relation to the rectification of the register of members.".

Amendment of section 156.

37. In section 156 of the principal Act,—

(*a*) after the words "a list of its members", the words "and a list of its debenture holders" shall be inserted;

(*b*) after the words "to be filed", the words "by the company" shall be inserted;

(*c*) the following *Explanation* shall be inserted, namely:—

"*Explanation.*—In computing the period of fourteen days prescribed under this section, the time taken in drawing up the order of the Court and in obtaining a copy of that order shall be excluded.".

Amendment of section 159.

38. In section 159 of the principal Act,—

(*a*) in sub-section (*1*),—

* * * * *

(*i*) in clause (*g*), for the words "and managers", the words "managers and secretaries" shall be substituted;

(*ii*) the following proviso and *Explanation* shall be added at the end, namely:—

"Provided that if any of the two immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as to past and present members and the shares** held and transferred by them, the return in question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number of shares held by a member.

Explanation.—Any reference in this section or in section 160 or 161 or in any other section or in Schedule V to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year has not been held be constructed as a reference to the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.";

(*b*) in sub-section (*2*), after the words "as circumstances admit", the following words shall be inserted, namely:—

"and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in accordance with the provisions of this Act, the company shall file with the return a statement specifying the reasons for not holding the annual general meeting.".

Amendment of section 160.

39. In section 160 of the principal Act, in sub-section (*1*),—

* * * * *

(*a*) after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) the names of members and the respective dates on which they became members and the names of persons who ceased to be members since the date of the annual general meeting of the immediately preceding year, *** and the dates on which they so ceased;";

(*b*) in clause (*b*), for the words "and its manager", the words "its manager and its secretary" shall be substituted.

Amendment of section 161.

40. In section 161 of the principal Act, in sub-section (*2*), in clause (*a*), the word "and" at the end of the clause shall be omitted and after that clause, the following clause shall be inserted, namely:—

"(*aa*) that since the date of the last annual return the transfer of all shares and debentures and the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose; and".

* * * * *

Amendment of section 165.

41. In section 165 of the principal Act, in sub-section (*4*), the words "on capital account" shall be omitted.

Amendment of section 166.

42. In section 166 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year:

Provided further that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months.";

(*b*) in sub-section (*2*),—

(*i*) the words "; and the notices calling the meeting shall specify it as the annual general meeting" shall be omitted;

(*ii*) the following provisos shall be added at the end, namely:—

"Provided that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose:

Provided further that—

(*a*) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and

(*b*) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the times as well as the place for its annual general meeting.".

Amendment of section 168.

43. In section 168 of the principal Act, the following words shall be added at the end, namely:—

"and in the case of a continuing default, with a further fine which may extend to two hundred and fifty rupees for every day after the first during which such default continues.".

* * * * *

Amendment of section 172.

44. In section 172 of the principal Act, in sub-section (2), the following proviso shall be added at the end, namely:—

"Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (3) of section 53, the statement of material facts referred to in section 173 need not be annexed to the notice as required by that section but it shall be mentioned in the advertisement that the statement has been forwarded to the members of the company.".

Amendment of section 173.

45. In section 173 of the principal Act, in sub-section (2),—

(*a*) for the words "the nature and extent of the interest", the words "the nature of the concern or interest" shall be substituted;

(*b*) the following proviso shall be added at the end, namely:—

"Provided that the extent of shareholding interest in the company of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any, shall also be set out in the statement where such director or the managing agent or the secretaries and treasurers or the manager holds not less than twenty per cent of the paid-up share capital of the company.".

Amendment of section 176.

46. In section 176 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.".

Amendment of section 187.

47. In section 187 of the principal Act, in sub-section (2), for the words "a member", the words "an individual member" shall be substituted.

Insertion of new section 187A.

48. After section 187 of the principal Act, the following section shall be inserted, namely:—

Representation of the President and

"187A. (1) The President of India or the Governor of a State, if he is a member of a company, may appoint such person

Governors in meetings of companies of which they are members.

as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.

(2) A person appointed to act as aforesaid shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers (including the right to vote by proxy) as the President or, as the case may be, the Governor could exercise as a member of the company.".

Amendment of section 190.

49. In section 190 of the principal Act,—

(*a*) in sub-section (*1*), for the words "twenty-eight days", the words "fourteen days" shall be substituted;

(*b*) for sub-sections (*2*) and (*3*), the following sub-section shall be substituted, namely:—

"(2) The company shall, immediately after the notice of the intention to move any such resolution has been received by it, give its members notice of the resolution in the same manner as it gives notice of the meeting, or if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than seven days before the meeting.".

Amendment of section 192.

50. In section 192 of the principal Act,—

(*a*) in sub-section (*1*), after the words "every resolution", the brackets, words and figures "(together with a copy of the statement of material facts annexed under section 173 to the notice of the meeting in which such resolution has been passed)" shall be inserted;

(*b*) in sub-section (*2*), for the words "a copy of every such resolution or agreement", the words, brackets and figure "a copy of every resolution referred to in sub-section (*1*) which has the effect of altering the articles and a copy of every agreement referred to in that sub-section" shall be substituted;

(*c*) in sub-section (*3*), for the words "such resolution or agreement", the words, brackets and figure "resolution or agreement referred to in sub-section (*1*)" shall be substituted;

(*d*) in sub-section (4), the words "and" at the end of clause (*e*) shall be omitted and after that clause, the following clause shall be inserted, namely:—

"(*ee*) resolutions passed by a company—

(*i*) according consent to the exercise by its Board of directors of any of the powers under clause (*a*), clause (*d*) and clause (*e*) of sub-section (*1*) of section 293;

(*ii*) approving the appointment of sole selling agents under section 294; and"

* * * * * *

Amendment of section 193.

51. In section 193 of the principal Act, for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) Every company shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its Board of directors or of every committee of the Board, to be kept by making within fourteen days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered.

(*1A*) Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed—

(*a*) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;

(*b*) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of fourteen days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose.

(*1B*) In no case the minutes of proceedings of a meeting shall be attached to any such book as aforesaid by pasting or otherwise.".

Substitution of new section for section 194.

52. For section 194 of the principal Act, the following section shall be substituted, namely:—

Minutes to be evidence.

"194. Minutes of meetings kept in accordance with the provisions of section 193 shall be evidence of the proceedings recorded therein.".

Amendment of section 195.

53. In section 195 of the principal Act, for the words and figures "have been made and signed in accordance with the provisions of sections 193 and 194", the words and figures "have been kept in accordance with the provisions of section 193" shall be substituted.

* * * * *

Insertion of new heading and new section 197A.

54. After section 197 of the principal Act, the following heading and section shall be inserted, namely:—

"Prohibition of simultaneous appointment of different categories of managerial personnel

Company not to appoint or employ certain different categories of managerial personnel at the same time.

197A. Notwithstanding anything contained in this Act or any other law or any agreement or instrument, no company shall, after the commencement of the Companies (Amendment) Act, 1960, appoint or employ at the same time, or after the expiry of six months from such commencement, continue the appointment or employment at the same time, of more than one of the following categories of managerial personnel, namely:—

(*a*) managing director,
(*b*) managing agent,
(*c*) secretaries and treasurers, and
(*d*) manager.".

Substitution of new section for section 198.

55. For section 198 of the principal Act, the following section shall be substituted, namely:—

Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

'198. (*1*) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its managing agent, secretaries and treasurers or manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in sections 349, 350 and 351, except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that nothing in this section shall affect the operation of sections 352 to 354 and 356 to 360.

(*2*) The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (*2*) of section 309.

(*3*) Within the limits of the maximum remuneration specified in sub-section (*1*), a company may pay a monthly remuneration to its * * * (managing or whole-time director) in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.

(*4*) Notwithstanding anything contained in sub-sections (*1*) to (*3*), if in any financial year, a company has no profits or its

profits are inadequate, the company may, subject to the approval of the Central Government, unless such approval has been obtained under any other provision of this Act, pay to its directors (including any managing or whole-time director), its managing agent, secretaries and treasurers, or manager or if there are two or more of them holding office in the company, to all of them together by way of minimum remuneration, such sum not exceeding fifty thousand rupees per annum [exclusive of any fees payable to directors under sub-section (2) of section 309] as it considers reasonable:

Provided that where a monthly payment is being made or is proposed to be made to any managing or whole-time director * * * or the manager or to any one or more of them and the Central Government is satisfied that for the efficient conduct of the business of the company the minimum remuneration of fifty thousand rupees per annum is or will be insufficient, the Central Government may by order sanction an increase in the minimum remuneration to such sum, for such period and subject to such conditions, if any, as may be specified in the order.

Explanation.—For the purposes of this section and sections 309, 310, 311, 348, 352, 381 and 387, "remuneration" shall include,—

(*a*) any expenditure incurred by the company in providing any rent-free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in sub-section (*1*);

(*b*) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;

(*c*) any expenditure incurred by the company in respect of any obligation or service which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and

(*d*) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid or his spouse or child.'.

Amendment of section 204.

56. In section 204 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Save as provided in sub-section (*2*), no company shall after the commencement of this Act, appoint or employ

any firm or body corporate to or in any office or place of profit under the company, other than the office of managing agent, secretaries and treasurers or trustee for the holders of debentures of the company, for a term exceeding five years at a time:

Provided that the initial appointment or employment of a firm or body corporate to or in any office or place of profit as aforesaid may, with the approval of the Central Government, be made for a term not exceeding ten years.";

(b) in sub-section (5), for the words "obtains anything", the words "obtains from the company anything" shall be substituted.

Substitution of new section for section 205.

57. For section 205 of the principal Act, the following section shall be substituted, namely:—

Dividend to be paid only out of profits.

'205. (1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government:

Provided that—

(a) if the company has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, it shall, before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years;

(b) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960, then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or

against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation in accordance with the provisions of sub-section (2) or against both;

(c) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation:

Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the Companies (Amendment) Act, 1960.

(2) For the purpose of sub-section (1), depreciation shall be provided either—

(a) to the extent specified in section 350; or

(b) in respect of each item of depreciable asset, for such an amount as is arrived at by dividing ninety-five per cent. of the original cost there of to the company by the specified period in respect of such asset; or

(c) on any other basis approved by the Central Government which has the effect of writing off by way of depreciation ninety-five per cent. of the original cost to the company of each such depreciable asset on the expiry of the specified period; or

(d) as regards any other depreciable asset for which no rate of depreciation has been laid down by the Indian Income-Tax Act, 1922 or the rules made thereunder, on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by any special order in any particular case:

Provided that where depreciation is provided for in the manner laid down in clause (b) or clause (c), then, in the event of the depreciable asset being sold, discarded, demolished or destroyed the written down value thereof at the end of the financial year in which the asset is sold, discarded, demolished or destroyed, shall be written off in accordance with the proviso to section 350.

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(3) No dividend shall be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

(4) Nothing in this section shall be deemed to affect in any manner the operation of section 208.

(5) For the purposes of this section—

(a) "specified period" in respect of any depreciable asset shall mean the number of years at the end of which at least ninety-five per cent. of the original cost of that asset to the company will have been provided for by way of depreciation if depreciation were to be calculated in accordance with the provisions of section 350;

(b) any dividend payable in cash may be paid by cheque or warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend or in the case of joint shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholder or the joint shareholders may in writing direct.'.

Amendment of section 207.

58. In section 207 of the principal Act, for the words "three months", the words "forty-two days" shall be substituted.

Amendment of section 209.

59. In section 209 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Every company shall keep at its registered office proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company:

Provided that all or any of the books of account aforesaid may be kept at such other place in India as the Board of directors may decide and when the Board of directors so

decides, the company shall, within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.";

(*b*) in sub-section (4), the following proviso shall be inserted, namely:—

"Provided that the books of accounts shall also be open to inspection by the Registrar or by any officer of Government authorised by the Central Government in this behalf if in the opinion of the Registrar or such officer sufficient cause exists for the inspection of the books of accounts.";

(*c*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) The books of account of every company relating to a period of not less than eight years immediately preceding the current year shall be preserved in good order:

Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year shall be so preserved.";

(*d*) in sub-section (*5*),—

(*i*) for the words "fine which may extend to one thousand rupees", the words "imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both" shall be substituted;

(*ii*) in the proviso, the words "that he had reasonable ground to believe, and did believe" shall be omitted;

(*iii*) after the proviso, the following further proviso shall be inserted; namely:—

"Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.";

(*e*) in sub-section (*6*),—

(*i*) in clause (*a*), for the words "or secretaries and treasurers" occurring at both the places, the words "secretaries and treasurers or managing director or manager" shall be substituted;

(*ii*) in clause (*d*), for the words "secretaries and treasurers, every director of the company", the words "secretaries and treasurers nor managing director nor manager, every director of the company" shall be substituted;

(*f*) in sub-section (7),—

(*i*) after the words "secretaries and treasurers", the words "managing director, manager" shall be inserted;

(*ii*) for the words "five which may extend to one thousand rupees", the words "imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both" shall be substituted.

Amendment of section 210.

60. In section 210 of the principal Act,—

(*a*) in sub-section (*3*), for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) in the case of any subsequent annual general meeting of the company, to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not precede the day of the meeting by more than six months, or in cases where an extension of time has been granted for holding the meeting under the second proviso to sub-section (*1*) of section 166, by more than six months and the extension so granted.";

(*b*) in sub-section (*5*), in the first proviso, the words "that he had reasonable ground to believe, and did believe," shall be omitted.

Amendment of section 211.

61. In section 211 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

'(*1*) Every balance-sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance-sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance-sheet under the heading "Notes" at the end of that Part:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance-sheet

has been specified in or under the Act governing such class of company.';

(b) in sub-section (2), in the proviso, after the words "banking company", the words "or any company engaged in the generation or supply of electricity" shall be inserted;

(c) in sub-section (3), for the words "national interest", the words "public interest" shall be substituted;

(d) in sub-section (5), in clause (iii), for the words and figures "the Electricity Supply Act, 1948", the words, figures and brackets "both the Indian Electricity Act, 1910, and the Electricity (Supply) Act, 1948" shall be substituted;

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(e) in sub-section (7), in the first proviso, the words "that he had reasonable ground to believe and did believe" shall be omitted;

(f) in sub-section (8), after the words "secretaries and treasurers,", the words, "managing director or manager," shall be inserted.

62. In section 212 of the principal Act,—

Amendment of section 212.

(a) in sub-section (2),—

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of this Act,—

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding company;

(ii) as at the end of the financial year of the subsidiary last before that of the holding company where the financial year of the subsidiary does not coincide with that of the holding company;";

(ii) in clause (c), for the words "The financial year aforesaid", the words "Where the financial year of the subsidiary does not coincide with that of the holding company, the financial year aforesaid" shall be substituted;

(b) in sub-section (9), in the first proviso, the words "that he had reasonable ground to believe, and did believe," shall be omitted;

(c) in sub-section (*10*), after the words "secretaries and treasurers,", the words "managing director, manager," shall be inserted.

Amendment of section 216.

63. In section 216 of the principal Act after the words "auditors' report", the brackets and words "(including the auditors' separate, special or supplementary report, if any)" shall be inserted.

Amendment of section 217.

64. In section 217 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*b*), the word "either" and the words "or in a subsequent balance-sheet; and" shall be omitted;

(*ii*) after clause (*c*), the following clause shall be inserted, namely:—

"(*d*) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of the report.";**

* * * * *

(*b*) in sub-section (*5*), in the second proviso, the words "that he had reasonable ground to believe, and did believe," shall be omitted.

* * * *

Amendment of section 220.

65. In section 220 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*),—

(*1*) the words "in the case of a public company" shall be omitted;

(*2*) the following proviso shall be added at the end, namely:—

"Provided that in the case of a private company, copies of the balance-sheet and copies of the profit and loss account shall be filed with the Registrar separately.";

(*ii*) clause (*b*) shall be omitted;

(*iii*) the following proviso shall be added at the end, namely:—

"Provided that,—

(*i*) in the case of a private company which is not a subsidiary of a public company, or

(*ii*) in the case of a private company of which the entire paid-up share capital is held by one or more bodies corporate incorporated outside India, or

(*iii*) in the case of a company which becomes a public company by virtue of section 43A, if the Central Government directs that it is not in the public interest that any person other than a member of the company shall be entitled to inspect, or obtain copies of, the profit and loss account of the company,

no person other than a member of the company concerned shall be entitled to inspect, or obtain copies of, the profit and loss account of that company under section 610.";

(*b*) in sub-section (*2*), the words "public or private" shall be omitted.

Amendment of section 224.

66. In section 224 of the principal Act, for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed, unless he is a retiring auditor.

(*1A*) Every auditor appointed under sub-section (*1*), unless he is a retiring auditor, shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept the appointment.".

Amendment of section 226.

67. In section 226 of the principal Act, in sub-section (*2*), in clause (*a*), for the words "those territories", the word "India" shall be substituted.

Amendment of section 227.

68. In section 227 of the principal Act,—

(*a*) in sub-section (*3*), after clause (*b*), the following clause shall be inserted, namely:—

"(*bb*) whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by clause (*c*) of sub-section (*3*) of that section and how he has dealt with the same in preparing the auditor's report;";

(*b*) in sub-section (*4*), after the brackets and letter "(*b*)", the brackets and letters "(*bb*)" shall be inserted;

(*c*) for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) The accounts of a company shall not be deemed as not having been, and the auditor's report shall not state that those accounts have not been, properly drawn up on the ground merely that the company has not disclosed certain matters if—

(*a*) those matters are such as the company is not required to disclose by virtue of any provisions contained in this or any other Act, and

(*b*) those provisions are specified in the balance-sheet and profit and loss account of the company.".

Amendment of section 228.

69. In section 228 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "unless the company in general meeting decides otherwise, be audited", the words and figures "be audited by the company's auditor appointed under section 224 or" shall be substituted;

(*ii*) for the words "by a person qualified as aforesaid", the words "by the company's auditor or a person qualified as aforesaid" shall be substituted;

(*b*) in sub-section (*2*), for the words "not so audited", the words "audited by a person other than the company's auditor" shall be substituted;

(*c*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) (*a*) Where a company in general meeting decides to have the accounts of a branch office audited otherwise

than by the company's auditor, the company in that meeting shall for the audit of those accounts appoint a person qualified for appointment as auditor of the company under section 226, or where the branch office is situate in a country outside India, a person who is either qualified as aforesaid or an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country, or authorise the Board of directors to appoint such a person in consultation with the company's auditor;

(*b*) the person so appointed (hereafter in this section referred to as the branch auditor) shall have the same powers and duties in respect of audit of the accounts of the branch office as the company's auditor has in respect of the same;

(*c*) the branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditor's report, deal with the same in such manner as he considers necessary;

(*d*) the branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors if so authorised by the company in general meeting.

(*4*) Notwithstanding anything contained in the foregoing provisions of this section, the Central Government may, by rules made in this behalf, exempt any branch office from the provisions of this section to the extent specified in the rules and in making such rules the Central Government shall have regard to all or any of the following matters, namely:—

(*a*) the arrangement made by the company for the audit of accounts of the branch office by a person otherwise qualified for appointment as branch auditor even though such person may be an officer or employee of the company;

(*b*) the nature and quantum of activity carried on at the branch office during a period of three years immediately preceding the date on which the branch office is exempted from the provisions of this section;

(*c*) the availability at a reasonable cost of a branch auditor for the audit of accounts of the branch office;

(*d*) any other matter which in the opinion of the Central Government justifies the grant of exemption to the branch office from the provisions of this section.".

Insertion of new section 233A.

70. After section 233 of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to direct special audit in certain cases.

"233A. (*1*) Where the Central Government is of the opinion—

(*a*) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or

(*b*) that any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains; or

(*c*) that the financial position of any company is such as to endanger its solvency,

the Central Government may at any time by order direct that a special audit of the company's accounts for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint either a chartered accountant as defined in clause (*b*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949, (whether or not such chartered accountant is a chartered accountant in practice within the meaning of that Act) or the company's auditor himself to conduct such special audit.

38 of 1949.

(*2*) The chartered accountant or the company's auditor appointed under sub-section (*1*) to conduct a special audit as aforesaid is hereafter in this section referred to as the special auditor.

(*3*) The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a company has under section 227:

Provided that the special auditor shall, instead of making his report to the members of the company, make the same to the Central Government.

(*4*) The report of the special auditor shall, as far as may be, include all the matters required to be included in an auditor's report under section 227 and, if the Central Government so directs, shall also include a statement on any other matter which may be referred to him by that Government.

(5) The Central Government may by order direct any person specified in the order to furnish to the special auditor within such time as may be specified therein such information or additional information as may be required by the special auditor in connection with the special audit; and on failure to comply with such order such person shall be punishable with fine which may extend to five hundred rupees.

(6) On receipt of the report of the special auditor, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force:

Provided that if the Central Government does not take any action on the report within four months from the date of its receipt, that Government shall send to the company either a copy of, or relevant extract from, the report with its comments thereon and require the company either to circulate that copy or those extracts to the members or to have such copy or extracts read before the company at its next general meeting.

(7) The expenses of, and incidental to, any special audit under this section (including the remuneration of the special auditor) shall be determined by the Central Government (which determination shall be final) and paid by the company and in default of such payment shall be recoverable from the company as an arrear of land revenue."

Amendment of section 234.

71. In section 234 of the principal Act,—

(*a*) in sub-section (*1*), for the words "in order that such document may afford full particulars of the matter to which it", the words "with respect to any matter to which such document" shall be substituted;

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the Registrar, inadequate, the Registrar may by another written order call on the company to produce before him for his inspection such books and papers as he considers necessary within such time as he may specify in the order; and it shall be the duty of the company, and of all persons who are officers of the company, to produce such books and papers.";

(c) in sub-section (4),—

(i) after the words "any such information or explanation" the words "or if the company or any such person as is referred to in sub-section (3A) refuses or neglects to produce any such books and papers" shall be inserted;

(ii) for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) the company and each such person shall be punishable with fine which may extend to five hundred rupees and in the case of a continuing offence, with an additional fine which may extend to fifty rupees for every day after the first during which the offence continues; and

(b) the Court trying the offence may, on the application of the Registrar and after notice to the company, make an order on the company for production before the Registrar of such books and papers as in the opinion of the Court, may reasonably be required by the Registrar for the purpose referred to in sub-section (1).";

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) On receipt of any writing containing the information or explanation referred to in sub-section (1), or of any book or paper produced whether in pursuance of an order of the Registrar under sub-section (3A) or of an order of the Court under sub-section (4), the Registrar may annex that writing, book or paper, or where that book or paper is required by the company, any copy or extract thereof, to the document referred to in sub-section (1); and any writing or any book or paper or copy or extract thereof so annexed shall be subject to the like provisions as to inspection, the taking of extracts and the furnishing of copies, as that document is subject.";

(e) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) If such information or explanation is not furnished within the specified time or if after perusal of such information or explanation or of the books and papers produced

whether in pursuance of an order of the Registrar under sub-section (*3A*) or of an order of the Court under sub-section (*4*), the Registrar is of opinion that the document referred to in sub-section (*1*), together with such information or explanation or such books and papers discloses an unsatisfactory state of affairs or does not disclose a full and fair statement of any matter to which the document purports to relate, the Registrar shall report in writing the circumstances of the case to the Central Government.";

(*f*) in sub-section (7), after the brackets and figure "(*3*)" the brackets, figure and letter "(*3A*)" shall be inserted.".

Insertion of new section 234A.

72. After section 234 of the principal Act, the following section shall be inserted, namely:—

Seizure of documents by Registrar.

"234A. (*1*) Where, upon information in his possession or otherwise, the Registrar has reasonable ground to believe that** books and papers of, or relating to, any company or other body corporate, or any managing agent or secretaries and treasurers or managing director or manager of such company or other body corporate, or any associate of such managing agent or secretaries and treasurers, *** may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Magistrate of the First Class or, as the case may be, the Presidency Magistrate having jurisdiction for an order for the seizure of such ** books and papers.

(2) After considering the application and hearing the Registrar, if necessary, the Magistrate may, by order, authorise the Registrar—

(*a*) to enter, with such assistance as may be required, the place or places where such *** books and papers are kept;

(*b*) to search that place or those places in the manner specified in the order; and

(*c*) to seize such *** books and papers as he considers necessary.

(*3*) The Registrar shall return the books and papers seized under this section as soon as may be, and in any case not later than the thirtieth day, after such seizure, to the company or the other body corporate or, as the case may be, to the managing agent or the secretaries and treasurers or the associate of such

managing agent or secretaries and treasurers or the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the Registrar may, before returning such books and papers as aforesaid, take copies of, or extracts from them or deal with the same in such other manner as he considers necessary.

(4) Save as otherwise provided in this section, every search made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898, relating to searches made under that Code.". 5 of 1898.

substitution of new section for section 239.

73. For section 239 of the principal Act, the following section shall be substituted, namely:—

Power of inspectors to carry investigation into affairs of related companies or of managing agent or associate, etc.

"239. (1) If an inspector appointed under section 235 or 237 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of—

(a) any other body corporate which is, or has at any relevant time been the company's subsidiary or holding company, or a subsidiary of its holding company, or a holding company of its subsidiary;

(b) any other body corporate which is, or has at any relevant time been, managed—

(i) by any person as managing agent or as secretaries and treasurers or as managing director or as manager, who is, or was at the relevant time, either the managing agent or the secretaries and treasurers or the managing director or the manager of the company; or

(ii) by any person who is, or was at the relevant time, an associate of the managing agent or secretaries and treasurers of the company; or

(iii) by any person of whom the managing agent or secretaries and treasurers of the company is, or was at the relevant time, an associate;

(c) any other body corporate which is, or has at any relevant time been, managed by the company or whose Board of directors comprises of nominees of the company or is accustomed to act in accordance with the directions or instructions of—

(i) the company, or

(*ii*) any of the directors of the company, or

(*iii*) any company any of whose directorships is held by the employees or nominees of those having the control and management of the first mentioned company; or

(*d*) any person who is or has at any relevant time been the company's managing agent or secretaries and treasurers or managing director or manager or an associate of such managing agent or secretaries and treasurers,

the inspector shall, subject to the provisions of sub-section (*2*), have power so to do and shall report on the affairs of the other body corporate or of the managing agent, secretaries and treasurers, managing director, manager or associate of the managing agent or secretaries and treasurers, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

(*2*) In the case of any body corporate or person referred to in clause (*b*) (*ii*), (*b*) (*iii*), (*c*) or (*d*) of sub-section (*1*), the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto:

Provided that before according approval under this sub-section, the Central Government shall give the body corporate or person a reasonable opportunity to show cause why such approval should not be accorded.".

Amendment of section 240.

74. In section 240 of the principal Act,—

(*a*) in sub-section (*1*), for the words "all officers" wherever they occur, the words "all officers and other employees" shall be substituted;

(*b*) in sub-section (*2*), the words "and for that purpose may require any of those persons to appear before him personally" shall be inserted at the end;

(*c*) for sub-section (*3*), the following sub-sections shall be substituted, namely:—

"(*3*) If any such person fails without reasonable cause or refuses—

(*a*) to produce to an inspector any book or paper which it is his duty under sub-section (*1*) to produce; or

(*b*) to appear before the inspector personally when required to do so under sub-section (*2*) or to answer any question which is put to him by the inspector in pursuance of that sub-section;

the inspector may certify the failure or refusal under his hand to the Court and make an application to the Court to hold an enquiry into the case; and the Court may, thereupon, after taking such evidence, if any, as may be produced against or on behalf of the alleged offender and hearing his explanation, if any, make an order for the production by him before the inspector of all such books or papers within a date to be specified in the order or requiring such person to answer any question which may be put to him by the inspector.

(*3A*) Any such person who disobeys an order of the Court under sub-section (*3*), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both and also with a further fine which may extend to two hundred rupees for every day after the first during which the disobedience continues.".

(*d*) in sub-section (*6*), in clause (*c*), for the word "officers" occurring at both the places, the words "officers and other employees" shall be substituted.

Insertion of new section 240A.

75. After section 240 of the principal Act, the following section shall be inserted, namely:—

Seizure of documents by inspector.

"240A. (*1*) Where in the course of investigation under section 235 or section 237 or section 239 or section 247, the inspector has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or any managing agent or secretaries and treasurers or managing director or manager of such company or other body corporate, or any associate of such managing agent or secretaries and treasurers may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application to the Magistrate of the First Class or, as the case may be, the Presidency Magistrate, having jurisdiction for an order for the seizure of such books and papers.

(*2*) After considering the application and hearing the inspector, if necessary, the Magistrate may by order authorise the inspector—

(*a*) to enter, with such assistance, as may be required, the place or places where such books and papers are kept;

(*b*) to search that place or those places in the manner specified in the order; and

(*c*) to seize books and papers he considers necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or *** the other body corporate, or, as the case may be, to the managing agent, or the secretaries and treasurers or the associate of such managing agent or secretaries and treasurers or the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return.

(4) Save as otherwise provided in this section, every search made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898, relating to searches made under that Code.".

Amendment of section 242.

76. In section 242 of the principal Act, in sub-section (*1*), for the words "all officers", the words "all officers and other employees" shall be substituted.

Amendment of section 245.

77. In section 245 of the principal Act,—

(*a*) in sub-section (*1*), in clause (*c*), for sub-clause (*i*), the following sub-clause shall be substituted, namely:—

"(*i*) any company, body corporate, managing agent, secretaries and treasurers associate, managing director or manager dealt with by the report of the inspector shall be liable to reimburse the Central Government in respect of the whole of the expenses, unless and except in so far as, the Central Government otherwise directs; and";

(*b*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The amount of expenses in respect of which any company, body corporate, managing agent, secretaries and treasurers, associate, managing director or manager is liable under sub-clause (*i*) of clause (*c*) of sub-section (*1*) to reimburse the Central Government shall be recoverable from that company, body corporate, managing agent, secretaries and treasurers, associate, managing director or manager, as an arrear of land revenue.".

Amendment of section 247.

78. In section 247 of the principal Act, in sub-section (5), in the first proviso, for the words "officers and agents", the words "officers and other employees and agents" shall be substituted.

Substitution of new section for section 250.

79. For section 250 of the principal Act, the following section shall be substituted, namely:—

Imposition of restrictions upon shares and debentures and prohibition of transfer of shares or debentures in certain cases.

"250. (1) Where it appears to the Central Government, whether in connection with any investigation under section 247, 248 or 249 or otherwise, that there is good reason to find out the relevant facts about any shares (whether issued or to be issued) and the Central Government is of the opinion that such facts cannot be found out unless the restrictions specified in sub-section (2) are imposed, the Central Government may, by order, direct that the shares shall be subject to the restrictions imposed by sub-section (2) for such period not exceeding three years as may be specified in the order.

(2) So long as any shares are directed to be subject to the restrictions imposed by this sub-section—

(a) any transfer of those shares shall be void;

(b) where those shares are to be issued, they shall not be issued; and any issue thereof or any transfer of the right to be issued therewith, shall be void;

(c) no voting right shall be exercisable in respect of those shares;

(d) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and any issue of such shares or any transfer of the right to be issued therewith, shall be void; and

(e) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of dividend, capital or otherwise.

(3) Where a transfer of shares in a company has taken place and as a result thereof a change—

(a) in the composition of the Board of directors, or

(b) where the managing agent is an individual, of the managing agent, or

(c) where the managing agent is a firm or a body corporate, in the constitution of the managing agent,

of the company is likely to take place and the Central Government is of the opinion that any such change would be

prejudicial to the public interest, that Government may, by order, direct that—

(*i*) the voting rights in respect of those shares shall not be exercisable for such period not exceeding three years as may be specified in the order;

(*ii*) no resolution passed or action taken to effect a change in the composition of the Board of directors or of, or in the constitution of, the managing agent before the date of the order shall have effect unless confirmed by the Central Government.

(*4*) Where the Central Government has reasonable ground to believe that a transfer of shares in a company is likely to take place whereby a change—

(*a*) in the composition of the Board of directors, or

(*b*) where the managing agent is an individual, of the managing agent, or

(*c*) where the managing agent is a firm or a body corporate, in the constitution of the managing agent,

of the company is likely to take place and the Central Government is of the opinion that any such change would be prejudicial to the public interest, that Government may by order direct that any transfer of shares in the company during such period not exceeding three years as may be specified in the order shall be void.

(*5*) The Central Government may, by order at any time, vary or rescind any order made by it under sub-section (*1*) or sub-section (*3*) or sub-section (*4*).

(*6*) Where the Central Government makes an order under sub-section (*1*) or sub-section (*3*) or sub-section (*4*) or sub-section (*5*) or refuses to rescind any such order, any person aggrieved thereby may apply to the Court and the Court may, if it thinks fit, by order, vacate any such order of the Central Government:

Provided that no order, whether interim or final, shall be made by the Court without giving the Central Government an opportunity of being heard.

(*7*) Any order of the Central Government rescinding an order under sub-section (*1*), or any order of the Court vacating any such order, which is expressed to be made with a view to

permitting a transfer of any shares, may continue the restrictions mentioned in clauses (*d*) and (*e*) of sub-section (*2*), either in whole or in part, so far as they relate to any right acquired, or offer made, before the transfer.

(*8*) Any order made by the Central Government under sub-section (*5*) shall be served on the company within fourteen days of the making of the order.

(*9*) Any person who—

(*a*) exercises or purports to exercise any right to dispose of any shares or of any right to be issued with any such shares when to his knowledge he is not entitled to do so by reason of any of the said restrictions applicable to the case under sub-section (*2*); or

(*b*) votes in respect of any shares whether as holder or proxy, or appoints a proxy to vote in respect thereof, when to his knowledge he is not entitled to do so by reason of any of the said restrictions applicable to the case under sub-section (*2*) or by reason of any order made under sub-section (*3*); or

(*c*) transfers any shares in contravention of any order made under sub-section (*4*); or

(*d*) being the holder of any shares in respect of which an order under sub-section (*2*) or sub-section (*3*) has been made, fails to give notice of the fact of their being subject to any such order to any person whom he does not know to be aware of that fact but whom he knows to be otherwise entitled to vote in respect of those shares, whether as holder or as proxy,

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

(*10*) Where shares in any company are issued in contravention of such of the restrictions as may be applicable to the case under sub-section (*2*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(*11*) A prosecution shall not be instituted under this section except by, or with the consent of, the Central Government.

(*12*) This section shall apply in relation to debentures as it applies in relation to shares.".

Amendment of section 252.

80. In section 252 of the principal Act,—

(*a*) in sub-section (*1*), the words ", and every private company which is a subsidiary of a public company," shall be omitted;

(*b*) in sub-section (*2*), the words "which is not a subsidiary of a public company" shall be omitted.

Amendment of section 253.

81. In section 253 of the principal Act, the words "public or private" shall be omitted.

Amendment of section 255.

82. In section 255 of the principal Act, in sub-section (*1*), for the words "Not less than two-thirds", the words "Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds" shall be substituted.

Amendment of section 256.

83. In section 256 of the principal Act, after sub-section (*5*), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—In this section and in section 257, the expression "retiring director" means a director retiring by rotation.'.

Amendment of section 257.

84. In section 257 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The company shall inform its members of the candidature of a person for the office of director or the intention of a member to propose such person as a candidate for that office, by serving individual notices on the members not less than seven days before the meeting:

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid if the company advertises such candidature or intention not less than seven days before the meeting in at least two newspapers circulating in the place where the registered office of the company is located, of which one is published in the English language and the other in the regional language of that place.".

Amendment of section 261.

85. In section 261 of the principal Act,—

(*a*) in sub-section (*1*), for the words "none of the following persons shall be appointed as a director of the company whose period of office is liable to determination by retirement of directors by rotation, except by a special resolution passed by the company:—", the following words and figures shall be substituted, namely:—

"none of the following persons shall be appointed—

(*i*) as a director of the company whose period of office is liable to determination by retirement of directors by rotation, or

(*ii*) to fill a casual vacancy in the office of a director under section 262, or

(*iii*) as an additional director under section 260, or

(*iv*) as an alternate director under section 313,

except by a special resolution passed by the company:—";

(*b*) in sub-section (2), for the words "as a director of the company", the words and figures "as a director or an additional or alternate director of the company or to fill a casual vacancy in the office of a director under section 262" shall be substituted.

Amendment of section 263.

86. In section 263 of the principal Act, in sub-section (2), in the proviso, for the words "retiring directors", the words "the director retiring by rotation" shall be substituted.

Insertion of new section 263A.

87. After section 263 of the principal Act, the following section shall be inserted, namely:—

Sections 177, 255, 256 and 263 not to apply in relation to companies not carrying business for profit, etc.

"263A. Nothing contained in sections 177, 255, 256 and 263 shall affect any provision in the articles of a company for the election by ballot of all its directors at each annual general meeting if such company does not carry on business for profit or prohibits the payment of a dividend to its members.".

Substitution of new section for section 264.

88. For section 264 of the principal Act, the following section shall be substituted, namely:—

Consent of candidate for directorship to be filed with the company and consent to act as director to be filed with the Registrar.

"264. (*1*) Every person (other than a person who has left at the office of the company a notice under section 257 signifying his candidature for the office of a director) proposed as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if oppointed.

(*2*) A person other than a director re-appointed after retirement by rotation shall not act as a director of a company unless he has within thirty days of his appointment signed and filed with the Registrar, his consent in writing to act as such director.

(*3*) This section shall not apply to a private company unless it is a subsidiary of a public company.".

Amendment of section 267.

89. In section 267 of the principal Act, in clause (c), the words "in India" shall be omitted.

90. For section 269 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 269.

"269. (*1*) In the case of a public company or a private company which is a subsidiary of a public company, whether such public company or private company is an existing company or not, the appointment of a person for the first time as a managing or whole-time director shall not have any effect unless approved by the Central Government: Appointment or re-appoin ment of managing or whole-time director to require Government approval in certain cases.

Provided that in the case of a public company, or a private company which is a subsidiary of a public company, incorporated after the commencement of the Companies (Amendment) Act, 1960, the appointment of a person as a managing or whole-time director for the first time after such incorporation may be made without the approval of the Central Government but such appointment shall cease to have effect after the expiry of three months from the date of such incorporation unless the appointment has been approved by that Government.

(*2*) Where a public company or a private company which is a subsidiary of a public company, is an existing company, the re-appointment of a person as a managing or whole-time director for the first time after the commencement of the Companies (Amendment) Act, 1960, shall not have any effect unless approved by the Central Government.".

91. In section 271 of the principal Act, for the words "this Act", the words, brackets and figures "the Companies (Amendment) Act, 1960," and for the words "file with the company", the words "file with the Registrar" shall be substituted. Amendment of section 271.

92. In section 274 of the principal Act, in sub-section (*1*), in clause (*d*), the words "in India" shall be omitted. Amendment of section 274.

93. In section 280 of the principal Act,— Amendmen of section 280.

(*a*) in sub-section (*2*), after the existing proviso, the following further proviso shall be inserted, namely:—

"Provided further that where a person has been appointed * * * as a director of a public company or of a private company which is a subsidiary of a public company, before he has attained the age of sixty-five years, he shall not be required to vacate his office within a period of three years after his appointment merely on the ground that he has attained that age within that period.";

(*b*) in sub-section (*3*), for the words "retiring directors", the words "a director retiring by rotation" shall be substituted.

Amendment of section 283.

94. In section 283 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "The office of a director shall be vacated if—", the words "The office of a director shall become vacant if—" shall be substituted;

(*ii*) for clause (*e*), the following clause shall be substituted, namely:—

"(*e*) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;";

(*iii*) in clause (*f*), the words "unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure" shall be added at the end;

(*iv*) in clause (*h*), for the words "he, or any firm in which", the words and brackets "he (whether by himself or by any person for his benefit or on his account), or any firm in which" shall be substituted;

(*v*) the word "or" at the end of clause (*j*) shall be omitted and the word "; or" shall be added at the end of clause (*k*) and after that clause, the following clause shall be inserted, namely:—

"(*l*) having been appointed a director by virtue of his holding any office or other employment in the company, or as a nominee of the managing agent of the company, he ceases to hold such office or other employment in the company or, as the case may be, the managing agency comes to an end.";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) Subject to the provisions of sub-sections (*1*) and (*2*), if a person functions as a director when he knows that the office of director held by him has become vacant on account of any of the disqualifications, specified in the several clauses of sub-section (*1*), he shall be punishable with fine which may extend to five hundred rupees for each day on which he so functions as a director.".

95. For section 285 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 285.

"285. In the case of every company, a meeting of its Board of directors shall be held at least once in every three calendar months; and not more than two * months shall intervene between the last day of the calendar month in which such meeting is held and the date of the next meeting: Board to meet at least once in every three calendar months.

Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.".

96. In section 287 of the principal Act, in sub-section (2), in the proviso, after the words "who are not interested", the words "present at the meeting being not less than two" shall be inserted. Amendment of section 287.

97. In section 292 of the principal Act,— Amendment of section 292.

(*a*) in sub-section (*1*), for the proviso, the following provisos and *Explanations* shall be substituted, namely:—

"Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the managing agent, secretaries and treasurers, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of moneys on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I.—Nothing in clause (c) of sub-section (*1*) shall apply to borrowings by a banking company from other

banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (*c*) of sub-section (*1*) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day to day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.";

(*b*) in sub-section (*2*), after the words "the total amount", the words "outstanding at any one time" shall be inserted.

Amendment of section 293.

98. In section 293 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*b*), the words "except in the case of renewal or continuance of an advance made by a banking company to its director in the ordinary course of business" shall be added at the end;

(*ii*) in clause (c), for the words "the sale proceeds resulting from the acquisition, after the commencement of this Act, without the consent of the company", the words "the amount of compensation received by the company in respect of the compulsory acquisition, after the commencement of this Act" shall be substituted;

(*iii*) the existing *Explanation* shall be numbered as *Explanation III* and before the *Explanation* as so numbered, the following *Explanations* shall be inserted, namely:—

'*Explanation I.*—Every resolution passed by the company in general meeting in relation to the exercise of the power referred to in clause (d) or in clause (e) shall specify the total amount up to which moneys may be borrowed by the Board of directors under clause (*d*) or, as the case may be, the total amount which may be contributed to charitable and other funds in any financial year under clause (*e*).

Explanation II.—The expression "temporary loans" in clause (*d*) means loans repayable on demand or within six months from the date of the loan such as short term, cash credit arrangements, the discounting of bills

and the issue of other short term loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of a capital nature.';

(*b*) after sub-section (*5*), the following sub-sections shall be inserted, namely:—

"(*6*) Every company shall disclose in its profit and loss account any amount contributed by it under clause (*e*) of sub-section (*1*) to any political party or for any political purpose to any individual or body during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party, individual or body to which or to whom such amount has been contributed.

(*7*) The provisions of this section in so far as they relate to contributions made by a company to any political party or for any political purpose to any individual or body shall also apply to a private company which is not a subsidiary of a public company.".

Amendment of section 294.

99. In section 294 of the principal Act,—

(*a*) for sub-sections (*1*) and (*2*), the following sub-sections shall be substituted, namely:—

"Appointment of sole selling agents.

(*1*) No company shall, after the commencement of the Companies (Amendment) Act, 1960, appoint a sole selling agent for any area for a term exceeding five years at a time:

Provided that nothing in this sub-section shall be deemed to prohibit the re-appointment, or the extension of the term of office, of any sole selling agent by further periods not exceeding five years on each occasion.

(*2*) After the commencement of the Companies (Amendment) Act, 1960, the Board of directors of a company shall not appoint a sole selling agent for any area except subject to the condition that the appointment shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made.

(*2A*) If the company in general meeting as aforesaid disapproves the appointment, it shall cease to be valid with effect from the date of that general meeting.";

(*b*) after sub-section (*3*), the following sub-sections shall be inserted, namely:—

"(4) Notwithstanding anything contained in the foregoing provisions of this section—

(*a*) where at any time during the period beginning on the 1st day of April, 1956 and ending on the commencement of the Companies (Amendment) Act, 1960, a managing agent has ceased to hold office as such and has been appointed as the sole selling agent of the company whose managing agent he was, the sole selling agency agreement whether taken in his own name or in association with, or in the name of, any other person for his benefit or on his own account, shall unless approved by the Central Government within a period of six months from such commencement, become void and inoperative and the appointment as sole selling agent shall, unless it has terminated by efflux of time, come to an end on the expiry of that period;

(*b*) no managing agent—

(*i*) who has ceased to hold office as such before the commencement of the Companies (Amendment) Act, 1960, but has not been appointed before such commencement as the sole selling agent of the company whose managing agent he was, or

(*ii*) who has ceased to hold office as such after the commencement of the Companies (Amendment) Act, 1960,

shall be appointed after such commencement during a period of three years from the date of such cesser as the sole selling agent of the company whose managing agent he was except with the approval of the Central Government obtained in this behalf.".

(5) (*a*) Where a company has a sole selling agent (by whatever name called) for an area and it appears to the Central Government that there is good reason so to do, the Central Government may require the company to furnish to it such information regarding the terms and conditions of the appointment of the sole selling agent as it considers necessary for the purpose of determining whether or not such terms and conditions are prejudicial to the interests of the company;

(*b*) if the company refuses or neglects to furnish any such information, the Central Government may appoint a suitable person to investigate and report on the terms and conditions of appointment of the sole selling agent;

(*c*) if after perusal of the information furnished by the company or, as the case may be, the report submitted by the person appointed under clause (*b*), the Central Government is of the opinion that the terms and conditions of appointment of the sole selling agent are prejudicial to the interests of the company, the Central Government may, by order, make such variations in those terms and conditions as would in its opinion make them no longer prejudicial to the interests of the company;

(*d*) as from such date as may be specified by the Central Government in the order aforesaid, the appointment of the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government.

(*6*) (*a*) Where a company has more selling agents than one (by whatever name called) in any area or areas and it appears to the Central Government that there is good reason so to do, the Central Government may require the company to furnish to it such information regarding the terms and conditions of appointment of all the selling agents as it considers necessary for the purpose of determining whether any of those selling agents should be declared to be the sole selling agent for such area or any of such areas;

(*b*) if the company refuses or neglects to furnish any such information, the Central Government may appoint a suitable person to investigate and report on the terms and conditions of appointment of all the selling agents;

(*c*) if after perusal of the information furnished by the company or, as the case may be, the report submitted by the person appointed under clause (*b*), the Central Government is of the opinion that having regard to the terms and conditions of appointment of any of the selling agents and to any other relevant factors, that selling agent is to all intents and purposes the sole selling agent for such area, although there may be one or more other selling agents of the company operating in that area, the Central Government may by order declare that selling agent to be the sole selling agent of the company for that area with effect from such date as may be specified in the order and may make

suitable variations in such of the terms and conditions of appointment of that selling agent as are in the opinion of the Central Government prejudicial to the interests of the company;

(*d*) as from the date specified in clause (*c*) the appointment of the selling agent declared to be the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government.

(7) It shall be the duty of the company—

(*a*) to produce to the person appointed under clause (*b*) of sub-section (5) or clause (*b*) of sub-section (6), all books and papers of, or relating to, the company which are in its custody or power; and

(*b*) otherwise to give to that person all assistance in connection with the investigation which the company is reasonably able to give.

(8) If a company refuses or neglects—

(*a*) to furnish the information required by the Central Government under clause (*a*) of sub-section (5) or clause (*a*) of sub-section (6), or

(*b*) to produce to the person appointed under clause (*b*) of sub-section (5) or clause (*b*) of sub-section (6) any books and papers which are in its custody or power or otherwise to give to that person any assistance which it is reasonably able to give,

the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and with a further fine of not less than fifty rupees for every day after the first during which such refusal or neglect continues.".

Amendment of section 295.

100. In section 295 of the principal Act,—

(*a*) in sub-section (1), for the words "shall, without obtaining the previous approval of the Central Government in that behalf,", the words "without obtaining the previous approval of the Central Government in that behalf shall, directly or indirectly," shall be substituted;

(*b*) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Sub-section (1) shall not apply to—

(a) any loan made, guarantee given or security provided—

(i) by a private company unless it is a subsidiary of a public company, or

(ii) by a banking company;

(b) any loan made—

(i) by a holding company to its subsidiary, or

(ii) by a company which is the managing agent or secretaries and treasurers of another company to that other company;

(c) any guarantee given or security provided—

(i) by a holding company in respect of any loan made to its subsidiary, or

(ii) by a company which is the managing agent or secretaries and treasurers of another company in respect of any loan made to that other company.";

(c) in sub-section (6), after the words "or security provided", the words, letters and figures "after the 1st day of April, 1956," shall be inserted.

Substitution of new section for section 296.

101. For section 296 of the principal Act, the following section shall be substituted, namely:—

Application of section 295 to book debts in certain cases.

"296. Section 295 shall apply to any transaction represented by a book debt which was from its inception in the nature of a loan or an advance.".

Amendment of section 297.

102. In section 297 of the principal Act, for sub-sections (2), (3), (4) and (5), the following sub-sections shall be substituted, namely:—

"(2) Nothing contained in clause (a) of sub-section (1) shall affect—

(a) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or

(b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of

any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business:

Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts; or

(c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.

(4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.

(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board.

(6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960.".

Amendment of section 298.

103. In section 298 of the principal Act, the words "notwithstanding anything contained in this Act," shall be omitted.

Amendment of section 299.

104. In section 299 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

"(6) Nothing in this section shall apply to any contract or arrangement entered into or to be entered into between

two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.".

Amendment of section 300.

105. In section 300 of the principal Act, in sub-section (*2*), in clause (*d*), for the words, brackets and figure "consists solely in his being a director of such company and the holder of not more than shares of such number or value therein as is requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (*1*)", the following words, brackets and figures shall be substituted, namely:—

"consists solely—

(*i*) in his being a director of such company and the holder of not more than shares of such number or value therein as is requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (*1*), or

(*ii*) in his being a member holding not more than two per cent. of its paid-up share capital".

Amendment of section 301.

106. In section 301 of the principal Act, for sub-sections (*1*), (*2*) and (*3*), the following sub-sections shall be substituted, namely:—

"(*1*) Every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which section 297 or section 299 applies, including the following particulars to the extent they are applicable in each case, namely:—

(*a*) the date of the contract or arrangement;

(*b*) the names of the parties thereto;

(*c*) the principal terms and conditions thereof;

(*d*) in the case of a contract to which section 297 applies or in the case of a contract or arrangement to which sub-section (*2*) of section 299 applies, the date on which it was placed before the Board;

(*e*) the names of the directors voting for and against the contract or arrangement and the names of those remaining neutral.

(*2*) Particulars of every such contract or arrangement to which section 297 or, as the case may be, sub-section (*2*)

of section 299 applies, shall be entered in the relevant register aforesaid—

(*a*) in the case of a contract or arrangement requiring the Board's approval, within seven days (exclusive of public holidays) of the meeting of the Board at which the contract or arrangement is approved,

(*b*) in the case of any other contract or arrangement, within seven days of the receipt at the registered office of the company of the particulars of such other contract or arrangement or within thirty days of the date of such other contract or arrangement whichever is later;

and the register shall be placed before the next meeting of the Board and shall then be signed by all the directors present at the meeting.

(*3*) The register aforesaid shall also specify, in relation to each director of the company, the names of the firms and bodies corporate of which notice has been given by him under sub-section (*3*) of section 299.

(*3A*) Nothing in sub-sections (*1*), (*2*) and (*3*) shall apply—

(*a*) to any contract or arrangement for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed one thousand rupees in the aggregate in any year; or

(*b*) to any contract or arrangement (to which section 297 or, as the case may be, section 299 applies) by a banking company for the collection of bills in the ordinary course of its business or to any transaction referred to in clause (*c*) of sub-section (*2*) of section 297.".

Amendment of section 302.

107. In section 302 of the principal Act, in sub-section (*7*), the words "or proposed resolution" and the words "or proposed contract" shall be omitted.

Amendment of section 303.

108. In section 303 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), after the words "any former name or surname in full", the words "his father's name and surname in full or where the individual is a married woman, the husband's name and surname in full", shall be inserted;

(*ii*) in clause (*b*), after the words "that nationality", the words "the father's name or where a director is a married woman, the husband's name", shall be inserted;

(*iii*) in clause (*c*), after the words "that nationality", the words "the father's name or where a partner is a married woman, the husband's name" shall be inserted;

(*iv*) in clause (*1*) of the *Explanation* for the words "whose instructions", the words "whose directions or instructions" shall be substituted;

(*b*) in sub-section (*2*),—

(*i*) for the words "a return in the prescribed form", the words "a return in duplicate in the prescribed form" shall be substituted;

(*ii*) for the words "a notification in the prescribed form", the words "a notification in duplicate in the prescribed form" shall be substituted;

(*iii*) the following proviso shall be added at the end, namely:—

"Provided that the notification of any change in any of the particulars contained in the register shall be sent within twenty-eight days of the close of the year during which the change occurred.".

109. For section 305 of the principal Act, the following section shall be substituted, namely:— **Substitution of new section for section 305.**

"305. (*1*) Every director, managing director, managing agent, secretaries and treasurers, manager or secretary of any company, who is appointed to, or relinquishes, the office of director, managing director, managing agent, secretaries and treasurers, manager or secretary of any other body corporate, shall, within twenty days of his appointment to, or as the case may be, relinquishment of, such office, disclose to the company aforesaid the particulars relating to the office in the other body corporate which are required to be specified under sub-section (*1*) of section 303; and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees. **Duty of directors, etc., to make disclosure.**

(*2*) The provisions of sub-section (*1*) shall also apply to a person deemed to be a director of the company by virtue of the *Explanation* to sub-section (*1*) of section 303 when such person is appointed to, or relinquishes, any of the offices in the other body corporate referred to in sub-section (*1*).".

Amendment of section 307.

110. In section 307 of the principal Act, after sub-section (*10*), the following sub-section shall be inserted, namely:—

"(*11*) The provisions of this section and section 308 shall apply to managing agents, secretaries and treasurers and managers as they apply to directors.".

Amendment of section 309.

111. In section 309 of the principal Act,—

(*a*) for sub-sections (*2*) and (*3*), the following sub-sections shall be substituted, namely:—

"(*2*) A director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him:

Provided that where immediately before the commencement of the Companies (Amendment) Act, 1960, fees for meetings of the Board and any committee thereof, attended by a director are paid on a monthly basis, such fees may continue to be paid on that basis for a period of two years after such commencement or for the remainder of the term of office of such director, whichever is less, but no longer.

(*3*) A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other:

Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent. of the net profits for one such director, and if there is more than one such director, ten per cent. for all of them together.";

(*b*) in sub-section (*4*), the following proviso shall be added at the end, namely:—

"Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of commission at a rate exceeding one per cent., or as the case may be, three per cent. of its net profits.";

(*c*) after sub-section (*5*), the following sub-sections shall be inserted, namely:—

"(*5A*) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess

of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

(5B) The company shall not waive the recovery of any sum refundable to it under sub-section (5A) unless permitted by the Central Government.".

Amendment of section 310.

112. In section 310 of the principal Act, for the words "In the case of a public company, or a private company which is a subsidiary of a public company, an amendment of any provision relating to the remuneration of any director including a managing or whole-time director, which purports to increase", the words "In the case of a public company, or a private company which is a subsidiary of a public company, any provision relating to the remuneration of any director including a managing or whole-time director, or any amendment thereof, which purports to increase" shall be substituted.

Amendment of section 313.

113. In section 313 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) An alternate director appointed under sub-section (1) shall not hold office as such for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held.".

Amendment of section 314.

114. In section 314 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) Except with the previous consent of the company accorded by a special resolution,—

(a) no director of a company shall hold any office or place of profit, and

(b) no partner or relative of such a director, no firm in which such a director or relative is a partner, no private company of which such a director is a director or member, and no director, managing agent, secretaries and treasurers, or manager of such a private company shall hold any office or place of profit carrying a total monthly remuneration of five hundred rupees or more,

except that of managing director, managing agent, secretaries and treasurers, manager, legal or technical adviser,

banker or trustee for the holders of debentures of the company,—

(*i*) under the company; or

(*ii*) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company or its holding company:

Provided that where a relative of a director or a firm in which such a relative is a partner, is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained within three months from the date of the appointment; and if such consent is not obtained within that period or is refused, the relative or the firm shall be deemed to have vacated his or its office or place on and from the date of expiry of that period and shall be liable to refund to the company any remuneration drawn by him or it for the period immediately preceding that date.

Explanation.—For the purpose of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution.

(*1A*) Nothing in sub-section (*1*) shall apply where a relative of a director or a firm in which such relative is a partner holds any office or place of profit under the company or a subsidiary thereof having been appointed to such office or place before such director becomes a director of the company.";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) Every individual, firm, private company or other body corporate proposed to be appointed to any office or place of profit to which this section applies shall, before or at the time of such appointment, declare in writing whether he or it is or is not connected with a director of the company in any of the ways referred to in sub-section (*1*).";

(c) in sub-section (3),—

(i) the words "in a company" shall be omitted;

(ii) in clause (a), for the words "obtains anything", the words "obtains from the company anything" shall be substituted;

(iii) in clause (b), for the words "obtains anything", the words "obtains from the company anything" shall be substituted.

Omission of section 315.

115. Section 315 of the principal Act shall be omitted.

Amendment of section 316.

116. In section 316 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "No company", the words "No public company and no private company which is a subsidiary of a public company," shall be substituted;

(ii) for the words "any other company", the words and brackets "any other company (including a private company which is not a subsidiary of a public company)" shall be substituted;

(b) in sub-section (2),—

(i) for the words "A company", the words "A public company or a private company which is a subsidiary of a public company" shall be substituted;

(ii) for the words "other company", the words and brackets "other company (including a private company which is not a subsidiary of a public company)" shall be substituted;

(c) in sub-section (3), for the words "two companies", the words "two companies of which each one or at least one is a public company or a private company which is a subsidiary of a public company" shall be substituted and for the words "this Act" occurring for the second time, the words, brackets and figures "the Companies (Amendment) Act, 1960," shall be substituted.

Amendment of section 317.

117. In section 317 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) This section shall not apply to a private company unless it is a subsidiary of a public company.".

Amendment of section 318.

118. In section 318 of the principal Act, in sub-section (3),—

(a) in clause (a), the words "secretaries and treasurers" shall be omitted;

(b) in clause (c), for the brackets and letter "(k)", the brackets and letter "(l)" shall be substituted.

Insertion of new section 325A.

119. After section 325 of the principal Act, the following section shall be inserted, namely:—

Subsidiary of a body corporate not to be appointed as managing agent.

"325A. After the commencement of the Companies (Amendment) Act, 1960, no company shall appoint as its managing agent any body corporate which is a subsidiary either of itself or of any other body corporate unless immediately before such commencement the company has any such subsidiary as its managing agent.".

Amendment of section 332.

120. In section 332 of the principal Act,—

(a) in sub-section (4), for clause (b), the following clause shall be substituted, namely:—

"(b) where the managing agent of the company is itself a company, every person who is a director, the secretaries and treasurers or a manager of the latter company, and where the latter company is a public company, every member who is entitled to exercise not less than ten per cent. of the total voting power therein and, where the latter company is a private company, every member thereof who is entitled to exercise not less than five per cent. of the total voting power therein.";

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) A director or member referred to in clause (b) of sub-section (4) shall include any person in accordance

with whose directions or instructions any director or, as the case may be, any member is in the opinion of the Central Government accustomed to act.".

Amendment of section 342.

121. In section 342 of the principal Act,—

(*a*) in sub-section (*1*), for the words "resign his office with effect from such date as may be specified in the notice", the words, brackets and figure "resign his office as from such date as may be specified in the notice but such resignation shall not be effective until it is accepted by the company under sub-section (7)" shall be substituted;

(*b*) in sub-section (*2*), for the words, brackets and figure "but his resignation shall not be effective until it is considered as provided in sub-section (*3*)", the words "but the managing agent shall not be absolved from liability to the company for his acts whether of commission or omission, during the period of his managing agency" shall be substituted;

(*c*) for sub-sections (*3*), (*4*) and (*5*), the following sub-sections shall be substituted, namely:—

"(*3*) When notice of resignation is given as aforesaid, the Board shall require the managing agent within such time as may be fixed by it or such further time as may be allowed by it, to prepare, and the managing agent shall prepare, a report on the state of affairs of the company as on the date specified in the notice of resignation or such subsequent date as the Board may think suitable, not being later than that on which the managing agent ceases to act as such under sub-section (*2*), together with a balance-sheet made out as on that date and a profit and loss account for the period commencing from the date up to which the last such account was prepared and ending with the date on which the managing agent ceases to act as such.

(*4*) In case of default by the managing agent in complying with the requisition of the Board under sub-section (*3*), the Board shall itself cause a report on the state of affairs of the company as on the date specified in the notice of

resignation or such subsequent date as the Board may think suitable, not being later than that on which the managing agent ceases to act as such under sub-section (2), together with a balance-sheet made out as on that date and a profit and loss account for the period specified in sub-section (3), to be prepared.

(5) The Board shall also obtain a report from the auditors of the company on such balance-sheet and profit and loss account in accordance with sections 227, 228 and 229 and place the managing agent's resignation together with the report on the state of the company's affairs, balance-sheet, profit and loss account and auditors' report mentioned above, before the company in general meeting.

(6) In relation to any report made by the auditors as aforesaid, sections 230 to 233 shall apply in like manner as they apply in relation to auditors' report referred to therein.

(7) The company in general meeting may, by a resolution, accept the resignation or take such other action with reference thereto as it may deem fit.".

Substitution of new section for section 343.

122. For section 343 of the principal Act, the following section shall be substituted, namely:—

"343. (1) The managing agent of a company shall not transfer his office to another person or enter into any agreement or arrangement with another person by or under which the managing agent parts with, or which has the effect of transferring, his right to manage the whole or substantially the whole of the affairs of the company in favour of or to that other person unless approval of the company in general meeting and also of the Central Government has been accorded to such transfer, agreement or arrangement.

(2) If the other person and the managing agent referred to in sub-section (1) contravene the provisions of that sub-section, that other person and the managing agent, and where the

managing agent is a firm, every partner in the firm and where the managing agent is a body corporate, every director of the body corporate, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.".

Amendment of section

123. In section 346 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "before such expiry", the words "before the expiry of six months aforesaid or where further time has been allowed by the Central Government, before the expiry of that time" shall be substituted;

(*ii*) in the *Explanation*, after clause (*c*), the following words shall be inserted as a separate paragraph, namely:—

"and where the managing agent, being a body corporate is a subsidiary of another body corporate, includes a change in the constitution of that other body corporate within the meaning of clause (*a*), clause (*b*) or clause (*c*).";

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Where the managing agent is a body corporate (whether or not it is a subsidiary of another body corporate) and its shares are for the time being dealt in, or quoted on, a recognised stock exchange, a change in the ownership of its shares, or

Where a managing agent being a body corporate is a subsidiary of another body corporate and the shares of the other body corporate are for the time being dealt in, or quoted on, a recognised stock exchange, a change in the ownership of the shares of the other body corporate,

shall not be deemed to be a change in the constitution of the managing agent within the meaning and for the pur-

poses of sub-section (*1*), unless the Central Government, by notification in the Official Gazette, otherwise directs:

Provided that no such notification shall be issued in respect of any such, or such other, body corporate as aforesaid, unless the Central Government is of the opinion that any change in the ownership of its shares has taken place or is likely to take place, which has affected or is likely to affect prejudicially the affairs of any company which is being managed by the managing agent.".

Amendment of section 348.

124. Section 348 of the principal Act shall be re-numbered as sub-section (*1*) of that section and—

(*a*) in that sub-section as so re-numbered, the words "Save as otherwise expressly provided in this Act," shall be omitted;

(*b*) after that sub-section as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) For the purposes of this section, any payment made by way of remuneration to any of the following persons shall be deemed to be included in the remuneration of the managing agent:—

(*a*) where the managing agent of the company is a firm, every partner in the firm;

(*b*) where the managing agent of the company is a public company, every director of that public company;

(*c*) where the managing agent of the company is a private company, every director and member of that private company.

(*3*) Nothing contained in sub-section (*1*) or sub-section (*2*) shall be deemed to affect the operation of sections 352, 354 and 356 to 360.".

Amendment of section 349.

125. In section 349 of the principal Act,—

(*a*) in sub-section (*3*),—

(*i*) in clause (*c*), for the words "profits from the sale", the words "profits of a capital nature including profits from the sale" shall be substituted;

(*ii*) the following proviso shall be inserted at the end, namely:—

"Provided that where the amount for which any fixed asset is sold exceeds the written down value thereof referred to in section 350, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value.";

(*b*) in sub-section (*4*),—

(*i*) for clause (*j*), the following clause shall be substituted, namely:—

"(*j*) outgoings inclusive of contributions made under clause (*e*) of sub-section (*1*) of section 293;";

(*ii*) for clause (*l*), the following clause shall be substituted, namely:—

"(*l*) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;";

(*iii*) after clause (*n*), the following clause shall be inserted, namely:—

"(*o*) debts considered bad and written off or adjusted during the year of account.";

(*c*) in sub-section (*5*), after clause (*c*), the following clause shall be inserted, namely:—

"(*d*) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess referred to in the proviso to section 350 of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value.".

Substitution of new section for section 350.

126. For section 350 of the principal Act, the following section shall be substituted, namely:—

Ascertainment of depreciation.

"350. The amount of depreciation to be deducted in pursuance of clause (*k*) of sub-section (*4*) of section 349 shall be the amount calculated with reference to the written-down value of the assets as shown by the books of the company at the end of the financial year expiring at the commencement of this Act or immediately thereafter and at the end of each subsequent financial year, at the rate specified for the assets by the Indian Income-tax Act, 1922, and the rules made thereunder for the time being in force, as normal depreciation including therein extra and multiple shift allowances but not including therein any special, initial or other depreciation or any development rebate, whether allowed by that Act or those rules or otherwise: 11 of 1922.

Provided that if any asset is sold, discarded, demolished or destroyed for any reason before depreciation of such asset has been provided for in full, the excess, if any, of the written-down value of such asset over its sale proceeds or, as the case may be, its scrap value, shall be written off in the financial year in which the asset is sold, discarded, demolished or destroyed.".

Amendment of section 356.

127. In section 356 of the principal Act, in sub-section (*2*), in clause (*a*), the words "or any other company managed by the managing agent" shall be added at the end.

Amendment of section 358.

128. In section 358 of the principal Act, in sub-section (*2*), after the words "not connected with that of the company", the words "or any other company managed by the managing agent" shall be inserted.

Amendmen of section 359.

129. In section 359 of the principal Act, in sub-section (*1*), the words "managing agents, secretaries and treasurers, manager" shall be omitted.

Amendment of section 360.

130. In section 360 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) A contract between a company and its managing agent or an associate of the managing agent,—

(*a*) for the sale, purchase or supply of any property, movable or immovable, or for the supply or rendering of any service other than that of managing agent; or

(*b*) for the underwriting of any shares or debentures to be issued or sold by the company;

shall not be valid against the company—

(*i*) unless the contract has been approved by the company by a special resolution passed by it, and

(*ii*) where the contract is for the supply or rendering of any service other than that of managing agent, unless further the contract has been approved by the Central Government,

either before the date of the contract or at any time within three months next after that date.";

(*b*) in sub-section (*2*),—

(*i*) in clause (*a*), after the words "proposed to be entered into", the words "or entered into" shall be inserted;

(*ii*) in clause (b), for the word "goods", the word "property" shall be substituted;

(*c*) for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) Nothing in clause (*a*) of sub-section (*1*) shall affect any contract or contracts for the sale, purchase or supply of any property or the supply or rendering of any services, in which either the company or the managing agent or associate, as the case may be, regularly trades or does business, provided that the value of such property or the cost of such services does not exceed five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts.".

Amendment of section 363.

131. Section 363 of the principal Act shall be re-numbered as sub-section (*1*) of that section and—

(*a*) in sub-section (*1*) as so re-numbered, for the words "shall account to the company for such sum as if he held it in trust for the company", the words "shall refund such sum to the company and until such sum is so refunded, hold it in trust for the company" shall be substituted;

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) The company shall not waive the recovery of any sum refundable to it under sub-section (*1*) unless permitted by the Central Government.",

Amendment of section 369.

132. In section 369 of the principal Act,—

(*a*) in sub-section (*1*), for the words "shall make", the words "shall, directly or indirectly, make" shall be substituted;

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Nothing contained in sub-section (*1*) or section 295 shall apply to—

(*a*) any credit given by the company to its managing agent for the purpose of facilitating the company's business and held by such agent in his own name in one or more current accounts, subject to limits previously approved by the directors of company and on no account exceeding twenty thousand rupees in the aggregate; or

(*b*) any loan made by a holding company to its subsidiary.

Explanation.—Credit referred to in clause (*a*) of sub-section (*2*) is confined to any cash advance given by way of a permanent advance or imprest for facilitating the carrying on of the company's business, transactions on such advance or imprest account being settled as far as possible on a monthly basis.".

Amendment of section 370.

133. In section 370 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Where the lending company—

(*a*) makes any loan to, or

(*b*) gives any guarantee, or provides any security, in connection with a loan made by any other person to, or to any other person by,

a firm in which a partner is a body corporate under the same management as the lending company—

(*i*) the loan shall be deemed to have been made to, or

(*ii*) the guarantee or the security shall be deemed to have been given or provided in connection with the

loan made by such other person to, or to such other person by,

a body corporate under the same management.";

(*b*) the *Explanation* to sub-section (*1*) shall be numbered and lettered as sub-section (*1B*) and in sub-section (*1B*) as so numbered and lettered,—

(*i*) for the words "For the purposes of this sub-section", the words, brackets, figures and letter "For the purposes of sub-section (*1*) and (*1A*)" shall be substituted;

(*ii*) at the end of clause (*ii*), the word "or" shall be added;

(*iii*) after clause (*ii*), the following clauses shall be inserted, namely:—

"(*iii*) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate; or

(*iv*) if the holding company of the one body corporate is under the same management as the other body corporate within the meaning of clause (*i*), clause (*ii*) or clause (*iii*), or

(*v*) if one or more directors of the one body corporate while holding, whether by themselves or together with their relatives, the majority of shares in that body corporate also hold, whether by themselves or together with their relatives, the majority of shares in the other body corporate.";

(*c*) after sub-section (*1B*) as so numbered and lettered, the following sub-sections shall be inserted, namely:—

"(*1C*) Every lending company shall keep a register showing—

(*a*) the names of all bodies corporate under the same management as the lending company and the name of every firm in which a partner is a body corporate under the same management as the lending company, and

(*b*) the following particulars in respect of every loan made, guarantee given or security provided by the lending company under this section:—

(*i*) the name of the body corporate to which the loan has been made whether such loan has been made before or after that body corporate came under the same management as the lending company,

(*ii*) the amount of the loan,

(*iii*) the date on which the loan has been made,

(*iv*) the date on which the guarantee has been given or security has been provided in connection with a loan made by any other person to, or to any other person by, any body corporate or firm referred to in sub-section (*1*) or (*1A*) together with the name of the person, body corporate or firm.

(*1D*) Particulars of every such loan, guarantee or security shall be entered in the register aforesaid within three days of the making of such loan, or the giving of such guarantee or the provision of such security or in the case of any loan made, guarantee given or security provided before the commencement of the Companies (Amendment) Act, 1960, within three months from such commencement or such further time not exceeding six months as the company may by special resolution allow.

(*1E*) If default is made in complying with the provisions of sub-section (*1C*) or (*1D*), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees and also with a further fine which may extend to fifty rupees for every day after the first during which the default continues.

(*1F*) The register aforesaid shall be kept at the registered office of the lending company and—

(*a*) shall be open to inspection at such office, and

(*b*) extracts may be taken therefrom or copies thereof may be required,

by any member of the company to the same extent and in the same manner and on the payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly.";

(*d*) for sub-section (*2*), the following sub-sections shall be substituted, namely:—

"(*2*) Nothing contained in the foregoing provisions of this section shall apply to—

(*a*) any loan made—

(*i*) by a holding company to its subsidiary, or

(*ii*) by the managing agent or secretaries and treasurers to any company under his or their management, or

(*iii*) by a banking company in the ordinary course of its business;

(*b*) any guarantee given or any security provided—

(*i*) by a holding company in respect of any loan made to its subsidiary, or

(*ii*) by the managing agent or secretaries and treasurers in respect of any loan made to any company under his or their management; or

(*iii*) by a banking company in the ordinary course of its business.

(*3*) Nothing in this section shall apply to a book debt unless the transaction represented by the book debt was from its inception in the nature of a loan or an advance.

(*4*) For the purposes of this section, any person in accordance with whose directions or instructions the Board of directors of a company is accustomed to act shall be deemed to be a director of the company.".

Insertion of new Section 307 A

134. After section 370 of the principal Act, the following section shall be inserted, namely:—

Provisions as to certain loans which could not have been made if sections 369 and 370 were in force.

"370A. Where any loan made, guarantee given or security provided by a company and outstanding at the commencement of the Companies (Amendment) Act, 1960 would not have been made, given or provided if section 369 or section 370 had been in force at the time when such loan was made, guarantee given or security provided, the company shall, within six months from the commencement of that Act, enforce the repayment of the

loan made or, as the case may be, revoke the guarantee given or the security provided, notwithstanding any agreement to the contrary:

Provided that the period of six months within which the company is required by this section to enforce the repayment of the loan or to revoke the guarantee or security, may be extended—

(*a*) in the case of a loan, guarantee or security under section 369, by the Central Government on an application made to it by the company for that purpose;

(*b*) in the case of a loan, guarantee or security under section 370, by a special resolution of the company.".

Amendment of section 371.

135. In section 371 of the principal Act, in sub-section (*1*), for the words and figures "section 369 or 370", the words, brackets, figures and letters "section 369 or section 370 [excluding sub-section (*1C*) or (*1D*)], or section 370A" shall be substituted.

Substitution of new section for section 372.

136. For section 372 of the principal Act, the following section shall be substituted, namely:—

Purchase by company of shares, etc., of other companies.

"372. (*1*) A company (hereafter in this section and section 373 referred to as the investing company) shall not be entitled to subscribe for, or purchase, the shares** of any other body corporate except to the extent and except in accordance with the restrictions and conditions specified in this section.

(*2*) The Board of directors of the investing company shall be entitled to invest in any shares** of any other body corporate up to ten per cent. of the subscribed capital of such other body corporate:

Provided that the aggregate of the investments so made by the Board in all other bodies corporate shall not exceed thirty per cent. of the subscribed capital of the investing company:

Provided further that the aggregate of the investments made in all other bodies corporate in the same group shall not exceed twenty per cent. of the subscribed capital of the investing company.

(*3*) In computing at any time the percentages specified in sub-section (*2*) and the provisos thereto, the aggregate of the investments made by the investing company in other body or bodies corporate [whether before or after the commencement of the Companies (Amendment) Act, 1960] up to that time shall be taken into account.

(4) The investing company shall not make any investment in the shares** of any other body corporate in excess of the percentages specified in sub-section (2) and the provisos thereto, unless the investment is sanctioned by a resolution of the investing company in general meeting and unless further it is approved by the Central Government:

Provided that the investing company may at any time invest up to any amount in shares offered to it under clause (a) of sub-section (1) of section 81 (hereafter in this section referred to as rights shares) irrespective of the aforesaid percentages:

Provided further that when at any time the investing company intends to make any investments in shares other than rights shares, then, in computing at that time any of the aforesaid percentages, all existing investments, if any, made in rights shares up to that time shall be included in the aggregate of the investments of the company.

(5) No investment shall be made by the Board of directors of an investing company in pursuance of sub-section (2), unless it is sanctioned by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting, except those not entitled to vote thereon, and unless further notice of the resolution to be moved at the meeting has been given to every director in the manner specified in section 286.

(6) Every investing company shall keep a register of all investments made by it in shares * * of any other body or bodies corporate (whether in the same group or not and whether in the case of a body corporate in the same group, such investments were made before or after that body came within the same group as the investing company), showing in respect of each investment the following particulars:—

(a) the name of the body corporate in which the investment has been made;

(b) the date on which the investment has been made;

(c) where the body corporate is in the same group as the investing company, the date on which the body corporate came in the same group;

(d) the names of all bodies corporate in the same group as the investing company.

(7) Particulars of every investment to which sub-section (6) applies shall be entered in the register aforesaid within seven days of the making thereof or in the case of investments made before the commencement of the Companies (Amendment) Act, 1960, within six months from such commencement, or such further time as the Central Government may grant on an application by the company in that behalf.

(8) If default is made in complying with the provisions of sub-section (6) or (7), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees and also with a further fine which may extend to fifty rupees for every day after the first during which the default continues.

(9) The register aforesaid shall be kept at the registered office of the investing company and—

(a) shall be open to inspection at such office, and

(b) extracts may be taken therefrom and copies thereof may be required,

by any member of the investing company to the same extent, in the same manner, and on the payment of the same fees as in the case of the register of members of the investing company; and the provisions of section 163 shall apply accordingly.

(10) Every investing company shall annex in each balance-sheet prepared by it after the commencement of the Companies (Amendment) Act, 1960, a statement showing the bodies corporate (indicating separately the bodies corporate in the same group) in the shares * * of which investments have been made by it (including all investments, whether existing or not, made subsequent to the date as at which the previous balance-sheet was made out) and the nature and extent of the investments so made in each body corporate:

Provided that in the case of a company whose principal business is the acquisition of shares, stock, debentures or other securities (hereafter in this section referred to as an investment company), it shall be sufficient if the statement shows only the investments existing on the date as at which the balance-sheet to which the statement is annexed has been made out.

(11) For the purposes of this section, a body corporate shall be deemed to be in the same group as the investing company—

(a) if the body corporate is the managing agent of the investing company; or

(*b*) if the body corporate and the investing company should, in virtue of sub-section (*1B*) of section 370, be deemed to be under the same management.

(*12*) References in the foregoing provisions of this section to shares shall in the case of investments made by the investing company in other bodies corporate in the same group, be deemed to include references to debentures also.

(*13*) The provisions of this section except the first proviso to sub-section (*2*) shall also apply to an investment company.

(*14*) This section shall not apply—

(*a*) to any banking or insurance company;

(*b*) to a private company, unless it is a subsidiary of a public company;

(*c*) to any company established with the object of financing, whether by way of making loans or advances to, or subscribing to the capital of, private industrial enterprises in India, in any case where the Central Government has made or agreed to make to the company a special advance for the purpose or has guaranteed or agreed to guarantee the payment of moneys borrowed by the company from any institution outside India,

(*d*) to investments by a holding company in its subsidiary; or

(*e*) to investments by a managing agent or secretaries and treasurers in a company managed by him or them.".

Amendment of section 373.

137. In section 373 of the principal Act,—

(*a*) after the words "made by a company", the words "in any other body corporate in the same group" shall be inserted; and

(*b*) for the words "the proviso to that sub-section", the words "the second proviso to that sub-section" shall be substituted.

Amendment of section 374.

138. In section 374 of the principal Act, for the words and figures "section 372 or 373", the words, figures and brackets "section 372 [excluding sub-sections (*6*) and (*7*)] or section 373" shall be substituted.

Amendment of section 377.

139. In section 377 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Nothing contained in sub-section (*1*), or in any other provision of this Act, or in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting, or by its Board of directors shall be deemed to authorise the managing agent to appoint the chairman of the Board of directors.";

(*b*) after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*6*) Where from any cause the total number of directors is so reduced as not to exceed five, but the number of directors appointed by the managing agent exceeds, after such reduction, the number authorised under sub-section (*1*), the managing agent shall determine which of them shall continue to hold office and intimate the choice made by him to the company before the expiry of one month from the happening of the cause and only the director so chosen shall continue to hold office as director with effect from such expiry:

Provided that if no choice is made by the managing agent as aforesaid, all the directors appointed by him shall with effect from such expiry, be deemed to have vacated their offices.".

Amendment of section 378.

140. In section 378 of the principal Act, the proviso shall be omitted.

Amendment of section 379.

141. In section 379 of the principal Act, after the words "subject as aforesaid", the words "and unless the context otherwise requires" shall be inserted.

Amendment of section 381.

142. In section 381 of the principal Act, the word "annual" occurring at both the places shall be omitted.

Amendment of section 384.

143. In section 384 of the principal Act, for the words "No public company, and no private company which is a subsidiary of a public company,", the words "No company" shall be substituted.

Amendment of section 386.

144. In section 386 of the principal Act, sub-section (*5*) shall be omitted.

Amendment of section 387.

145. In section 387 of the principal Act,—

(*a*) the words "not exceeding five," shall be omitted;

(*b*) the following proviso shall be added at the end, namely:—

"Provided that except with the approval of the Central Government such remuneration shall not exceed in the aggregate five per cent. of the net profits.".

Amendment of section 388.

146. In section 388 of the principal Act, for the figures "310", the figures "269, 310" shall be substituted.

Insertion of new section 388A.

147. After section 388 of the principal Act, the following section shall be inserted, namely:—

Sections 386 to 388 not to apply to certain private companies.

"388A. Sections 386, 387 and 388 shall not apply to a private company unless it is a subsidiary of a public company.".

Amendment of section 391.

148. In section 391 of the principal Act, in sub-section (*2*), after the words "where proxies are allowed", the words and figures "under the rules made under section 643" shall be inserted.

Amendment of section 396.

149. In section 396 of the principal Act, in sub-section (*1*), for the words "national interest", the words "public interest" shall be substituted.

Amendment of section 398.

150. In section 398 of the principal Act, in sub-section (*1*), in clause (*b*), after the words "secretaries and treasurers", where they occur for the first time, the words "or manager" shall be inserted.

Amendment of section 407.

151. In section 407 of the principal Act, in sub-section (*1*), in clause (*b*), for the words "the order terminating the agreement", the words "the order terminating or setting aside the agreement" shall be substituted.

Amendment of section 408.

152. In section 408 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) the words "being members of the company," shall be omitted;

(*ii*) for the words "two hundred", the words "one hundred" shall be substituted;

(*b*) in sub-section (*2*), for the words "two members of the company", the words "two persons" shall be substituted;

(*c*) after sub-section (*3*), the following sub-sections shall be inserted, namely:—

"(*4*) A person appointed under sub-section (*1*) to hold office as a director or a person directed under sub-section (*2*) to hold office as an additional director, shall not be required to hold any qualification shares nor his period of office shall be liable to determination by retirement of directors by rotation; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the case may be, an additional director.

(*5*) No change in the Board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the Central Government.".

Amendment of section 409

153. In section 409 of the principal Act, in sub-section (*1*),—

(*a*) for the words "or the secretaries and treasurers", the words "the secretaries and treasurers or the manager" shall be substituted;

(*b*) for the words "no resolution passed or action taken", the words "no resolution passed or that may be passed or no action taken or that may be taken" shall be substituted.

Amendment of section 411.

154. In section 411 of the principal Act, the following provisos shall be added at the end, namely:—

"Provided that it shall not be necessary for the Central Government to refer to the Advisory Commission any application under section 408 or section 409 which in the opinion of that Government is of a frivolous nature or deals with matters of minor importance:

Provided further that the Central Government may, in the case of any application under section 408 or section 409 which has been, or may be, referred to the Advisory Commission, make such interim order as it thinks fit but it shall not make any final order on such application except after considering the advice tendered by the Advisory Commission.".

Amendment of section 417

155. In section 417 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Any money or security deposited with a company by any of its employee in pursuance of his contract of

service with the company shall be kept or deposited by the company within fifteen days from the date of deposit—

(*a*) in a post office savings bank account, or

(*b*) in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or

(*c*) where the company itself is a Scheduled Bank, in a special account to be opened by the Company for the purpose either in itself or in the State Bank of India or in any other Scheduled Bank.";

(*b*) in sub-section (*3*), the words "with a Scheduled Bank" shall be omitted.

Amendment of section 418.

156. In section 418 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted namely:—

"(*1*) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, as the case may be, either—

(*a*) be deposited—

(*i*) in a post office savings bank account, or

(*ii*) in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or

(*iii*) where the company itself is a Scheduled Bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other Scheduled Bank; or

(*b*) be invested in the securities mentioned or referred to in clauses (*a*) to (*e*) of section 20 of the Indian Trusts Act, 1882.";

2 of 1882.

(*b*) in sub-section (*4*),—

(*i*) the word "separate" shall be omitted;

(*ii*) after the words "to the trustees", the words "within fifteen days from the date of collection" shall be inserted.

Amendment of section 420.

157. In section 420 of the principal Act, for the words "fine which may extend to five hundred rupees", the words "imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees" shall be substituted.

Amendment of section 426.

158. In section 426 of the principal Act, in sub-section (*1*), in clause (*g*), for the words "any other creditor who is not a past or present member of the company", the words "any creditor claiming otherwise than in the character of a past or present member of the company" shall be substituted.

Amendment of section 439.

159. In section 439 of the principal Act, in sub-section (*5*),—

(*a*) for the words, brackets and letters "clauses (*b*), (*c*) and (*e*)", the words, brackets and letters "clauses (*b*), (*c*), (*d*), (*e*) and (*f*)" shall be substituted;

(*b*) in the first proviso, for the words "an inspector", the words, figures and letter "a special auditor appointed under section 233A or an inspector" shall be substituted.

Amendment of section 444.

160. In section 444 of the principal Act, for the words "Official Liquidator", the words "Official Liquidator and the Registrar" shall be substituted.

Amendment of section 445.

161. In section 445 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) In computing the period of one month from the date of the making of a winding up order under sub-section (*1*), the time requisite for obtaining a certified copy of the order shall be excluded.".

Amendment of section 446.

162. In section 446 of the principal Act,—

(*a*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—

(*a*) any suit or proceeding by or against the company;

(*b*) any claim made by or against the company (including claims by or against any of its branches in India);

(*c*) any application made under section 391 by or in respect of the company;

(*d*) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.";

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) Nothing in sub-section (*1*) or sub-section (*3*) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.".

Amendment of section 448.

163. In section 448 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) **The Central Government may appoint one or more Deputy or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions.**";

(*b*) in sub-section (*2*), the words, brackets, figure and letter "and as including references to Deputy or Assistant Official Liquidators appointed under sub-section (*1A*)" shall be inserted at the end.

Amendment of section 454.

164. In section 454 of the principal Act,—

(*a*) for sub-section (*5*), the following sub-sections shall be substituted, namely:—

"(*5*) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one hundred rupees for every day during which the default continues, or with both.

(*5A*) The Court by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub-section (*5*) upon receiving a

complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898, for the trial of summons cases by magistrates.". 5 of 1898.

Amendment of section 455.

165. In section 455 of the principal Act, in sub-section (*1*), after the words "six months from the date of the order", the words "or such extended period as may be allowed by the Court" shall be inserted.

Amendment of section 456.

166. In section 456 of the principal Act,—

(*a*) in sub-section (*1*), after the words "the liquidator", the words "or the provisional liquidator, as the case may be," shall be inserted;

(*b*) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

(*1B*) For the purpose of securing compliance with the provisions of sub-section (*1A*), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.".

Amendment of section 457.

167. In section 457 of the principal Act, in sub-section (*2*), after clause (*i*), the following clause shall be inserted, namely:—

"(*ia*) to inspect the records and returns of the company on the files of the Registrar without payment of any fee;".

Insertion of new section 458A.

168. After section 458 of the principal Act, the following section shall be inserted, namely:—

Exclusion of certain time in computing periods of limitation.

"458A. Notwithstanding anything in the Indian Limitation Act, 1908 or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Court, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded.".

9 of 1908.

Amendment of section 463.

169. In section 463 of the principal Act, in sub-section (*1*),—

(*a*) after the words "imposed on him by this Act", the words and figures "or by the Indian Companies Act, 1913" shall be inserted;

(*b*) the following proviso shall be added at the end, namely:—

"Provided that where the winding up of a company has commenced before the commencement of this Act, the Court may, on the application of the Central Government, appoint in place of such liquidator the Official Liquidator as the liquidator in such winding up.".

Amendment of section 464.

170. In section 464 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) (*a*) The Court may, at the time of making an order for the winding up of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator.

(*b*) Where a direction is given by the Court as aforesaid, the liquidator shall, within two months from the date of such direction, convene a meeting of the creditors of the company (as ascertained from its books and documents) for the purpose of determining who are to be members of the committee.";

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) The liquidator shall, within fourteen days from the date of the creditors' meeting or such further time as the

Court in its discretion may grant for the purpose, convene a meeting of the contributories to consider the decision of the creditors' meeting with respect to the membership of the committee; and it shall be open to the meeting of the contributories to accept the decision of the creditors' meeting with or without modifications or to reject it.";

(c) in sub-section (3), the words "whether there shall be a committee of inspection; and, if so," shall be omitted.

Amendment of section 465.

171. In section 465 of the principal Act, in sub-section (3), the words "and, failing such appointment, at least once a month," shall be omitted.

Amendment of section 468.

172. In section 468 of the principal Act,—

(a) for the words "or officer", the words "officer or other employee" shall be substituted;

(b) for the words "in his hands", the words "in his custody or under his control" shall be substituted.

Amendment of section 477.

173. In section 477 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

"(5) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the Court may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as to the Court may seem just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the Court may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

(7) Orders made under sub-sections (5) and (6) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908, respectively. 5 of 1908.

(8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) or sub-section (6) shall by such payment or delivery be, unless otherwise

directed by such order, discharged from all liability whatsoever in respect of such debt or property.".

Amendment of section 481.

174. In section 481 of the principal Act, in sub-section (*1*), after the words "completely wound up", the words "or when the Court is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made" shall be inserted.

Amendment of section 488.

175. In section 488 of the principal Act, in sub-section (*2*), for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) it is accompanied by a copy of the report of the auditors of the company (prepared, as far as circumstances admit, in accordance with the provisions of this Act) on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance-sheet of the company made out as on the last-mentioned date and also embodies a statement of the company's assets and liabilities as at that date".

Amendment of section 512.

176. In section 512 of the principal Act, in sub-section (*1*), in clause (*a*), for the words, brackets and figures "clauses (*i*) to (*iv*) of sub-section (*2*)", the words, brackets, letters and figure "clauses (*a*) to (*d*) of sub-section (*1*)" shall be substituted.

Amendment of section 515.

177. In section 515 of the principal Act,—

(*a*) in sub-section (*1*), for the words "the Court may appoint a liquidator", the words "the Court may appoint the Official Liquidator or any other person as a liquidator" shall be substituted;

(*b*) for sub-section (*2*), the following sub-sections shall be substituted, namely:—

"(*2*) The Court may, on cause shown, remove a liquidator and appoint the Official Liquidator or any other person as a liquidator in place of the removed liquidator.

(*3*) The Court may also appoint or remove a liquidator on the application made by the Registrar in this behalf.

(*4*) If the Official Liquidator is appointed as liquidator under the proviso to sub-section (*2*) of section 502 or under

this section, the remuneration to be paid to him shall be fixed by the Court and shall be credited to the Central Government.".

Omission of section 521.

178. Section 521 of the principal Act shall be omitted.

Amendment of section 524.

179. In section 524 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

"(3) The Court may appoint the Official Liquidator as a liquidator under sub-section (1) or to fill any vacancy occasioned under sub-section (2).

(4) The Court may also appoint or remove a liquidator on an application made by the Registrar in this behalf.".

Amendment of section 529.

180. In section 529 of the principal Act, in sub-section (2), the following proviso shall be added at the end, namely:—

"Provided that if a secured creditor instead of relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to pay the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.".

Amendment of section 530.

181. In section 530 of the principal Act, in sub-section (1), in clause (b), after the words "relevant date", the following words, letters and figures shall be inserted, namely:—

"and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947." 14 of 1947.

Insertion of new section 531A.

Avoidance of voluntary transfer.

182. After section 531 of the principal Act, the following section shall be inserted, namely:—

"531A. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by or subject to the supervision of the Court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.".

Amendment of section 35.

183. In section 535 of the principal Act, in sub-section (4), for the words "the company shall be deemed to have adopted it", the words "he shall be deemed to have adopted it" shall be substituted.

Amendment of section 537.

184. In section 537 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.".

Amendment of section 546.

185. In section 546 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), in the case of a winding up by the Court, the Supreme Court may make rules under section 643 providing that the liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be specified in the rules, exercise any of the powers referred to in sub-clause (*ii*) or sub-clause (*iii*) of sub-section (1) without the sanction of the Court.".

Amendment of section 549.

186. In section 549 of the principal Act, in sub-section (1), for the words "the Central Government", the words "the Supreme Court" shall be substituted.

Amendment of section 551.

187. In section 551 of the principal Act,—

(*a*) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—

(*a*) in the case of a winding up by or subject to the supervision of the Court, in Court; and

(*b*) in the case of a voluntary winding up, with the Registrar :

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 462 apply." ;

(*b*) in sub-section (*5*), the following proviso shall be added at the end, namely:—

"Provided that if the liquidator makes wilful default in causing the statement referred to in sub-section (*1*) to be audited by a person qualified to act as auditor of the company, the liquidator shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.".

Amendment of section 555.

188. In section 555 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing—

(*a*) dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared, or

(*b*) assets refundable to any contributory which have remained undistributed for six months after the date on which they became refundable,

the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India in a separate account to be known as the Company's Liquidation Account.";

(*b*) in sub-section (*2*), for the word "unclaimed", the word "unpaid" shall be substituted;

(*c*) in sub-section (*9*), in clause (*a*), the following proviso shall be added at the end, namely:—

"Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause.".

Amendment of section 582.

189. In section 582 of the principal Act, in clause (*b*), the words "at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the Court" shall be inserted at the end.

Amendment of section 595.

190. In section 595 of the principal Act, in clause (*c*), the word ", advertisements" shall be omitted.

191. In section 610 of the principal Act,— Amendment of section 610.

(*a*) in sub-section (*1*),—

(*i*) for the words "Any person may", the words "Save as otherwise provided elsewhere in this Act, any person may" shall be substituted ;

(*ii*) in clause (*b*), for the words "on payment of a fee of five rupees in the case of a certificate of incorporation, and of six annas for every one hundred words or fractional part thereof", the words "on payment in advance of a fee of five rupees in the case of a certificate of incorporation, and of one rupee for every one hundred words or fractional part thereof" shall be substituted;

(*b*) sub-section (*4*) shall be omitted.

192. Section 611 of the principal Act shall be re-numbered as sub-section (*1*) of that section and— Amendment of section 611.

(*a*) in that sub-section as so re-numbered, after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that in the case of resolutions to which section 192 applies, not more than one * fee shall be required for the filing of more resolutions than one passed in the same meeting if such resolutions are filed with the Registrar at the same time.";

(*b*) after that sub-section as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Any document required or authorised by this Act to be filed or registered, or any fact required or authorised by this Act to be registered, with the Registrar on payment of the fee specified therefor in Schedule X, may, without prejudice to any other liability, be filed or registered after the time, if any, specified in this Act for its filing or registration on payment of such additional fee not exceeding ten times the amount of the fee so specified as the Registrar may determine.".

Insertion of new section 614A in Part XII.

193. In Part XII, after section 614 of the principal Act, the following section shall be inserted, namely:—

Power of Court trying offences under the Act to direct the filing of documents with Registrar.

"614A. (1) Any Court trying an offence for a default in compliance with any provision of this Act which requires a company or its officers to file or register with, or deliver or send to, the Registrar, any return, account or other document, may at the time of sentencing, acquitting or discharging the accused, direct by order, if it thinks fit to do so, any officer or other employee of the company to file or register with, deliver or send to, the Registrar on payment of the fee including the additional fee required to be paid under section 611, such return, account or other document within such time as may be specified in the order.

(2) Any officer or other employee of the company who fails to comply with an order of the Court under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.".

Amendment of section 616.

194. In section 616 of the principal Act, in clause (c), after the words "the provisions of", the words and figures "the Indian Electricity Act, 1910, or" shall be inserted. 9 of 1910

Amendment of section 617.

195. In section 617 of the principal Act,—

(a) for the words and figures "sections 618, 619 and 620", the words "this Act" shall be substituted;

(b) for the words "share capital", the words "paid-up share capital" shall be substituted;

(c) the words "and includes a company which is a subsidiary of a Government company as thus defined" shall be added at the end.

Substitution of new section for section 618.

196. For section 618 of the principal Act, the following section shall be substituted, namely:—

Government companies not to have managing agents.

"618. No Government company, whether formed before or after the 1st day of April, 1956, shall, after the commencement of the Companies (Amendment) Act, 1960, appoint or employ, or after the expiry of six months from such commencement, continue the appointment or employment of, any managing agent:

Provided that where a company has become a Government company after the 1st day of April, 1956, nothing in this section shall prevent that company from continuing after the commencement of the Companies (Amendment) Act, 1960, the appointment or employment of a managing agent appointed or employed before such commencement.".

Insertion of new section 619 A.

197. After section 619 of the principal Act, the following section shall be inserted, namely:—

Annual reports on Government companies.

"619A. (*1*) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—

(*a*) prepared within three months of its annual general meeting before which the audit report is placed under sub-section (5) of section 619; and

(*b*) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and any comments upon, or supplement to, the audit report, made by the Comptroller and Auditor-General of India.

(*2*) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (*1*) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments or supplement referred to in sub-section (*1*).

(*3*) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

(*a*) prepared within the time specified in sub-section (*1*); and

(*b*) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature with a copy of the audit report and comments or supplement referred to in sub-section (*1*).".

Insertion of new heading and new section 620A.

198. After section 620 of the principal Act, the following heading and section shall be inserted, namely:—

'*Modification of Act in its application to* Nidhis *and Mutual Benefit Societies*

Power to modify Act in its application to *Nidhis*, etc.

620A. (*1*) In this section, "*Nidhi*" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any *Nidhi* or Mutual Benefit Society, or

(b) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament."

Amendment of section 621.

199. In section 621 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, where the complainant under sub-section (1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.". 5 of 1898.

* * * *

Insertion of new sections 624 A and 624 B.

200. After section 624 of the principal Act, the following sections shall be inserted, namely:—

Power of Central Government to appoint company prosecutors.

"624A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Central Government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by that Code on public prosecutors appointed by a State Government under section 492 of that Code. 5 of 1898.

Appeal against acquittal.

624B. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Central Government may, in any case arising out of this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate Court.". 5 of 1898.

Amendment of section 627.

201. In section 627 of the principal Act, in sub-section (*1*), after the words "by the Central Government", the words, figures and letter "or by a company prosecutor appointed under section 624A" shall be inserted.

Insertion of new section 629A.

202. After section 629 of the principal Act, the following section shall be inserted, namely:—

Penalty where no specific penalty is provided elsewhere in the Act.

"629A. If a Company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five hundred rupees, and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which the contravention continues.".

Amendment of section 633.

203. In section 633 of the principal Act,—

(*a*) in sub-section (*1*), the following proviso shall be added at the end, namely:—

"Provided that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.";

(*b*) for sub-section (*2*), the following sub-sections shall be substituted, namely:—

"(*2*) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (*1*).

(*3*) No Court shall grant any relief to any officer under sub-section (*1*) or sub-section (*2*) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.".

Insertion of new heading and new section 637A.

204. After section 637 of the principal Act, the following heading and section shall be inserted and shall be deemed always to have been inserted, namely:—

"Grant of approval, etc., subject to conditions and levy of fees on applications

Power of Central Government to accord approval, etc., subject to conditions and to prescribe fees on applications.

637A. (*1*) Where the Central Government is required or authorised by any provision of this Act,—

(*a*) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter;

(*b*) to give any direction in relation to any matter; or

(*c*) to grant any exemption in relation to any matter,

then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption subject to such conditions, limitations or restrictions as it may think fit to impose.

(*2*) Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made by a company to the Central Government under any provision of this Act—

(*a*) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government to, or in relation to, any matter; or

(*b*) in respect of any direction or exemption to be given or granted by that Government in relation to any matter; or

(*c*) in respect of any other matter,

shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed:

Provided that different fees may be prescribed for applications in respect of different matters or for applications by different classes of companies.".

Omission of heading and section 639.

205. (*1*) Section 639 of the principal Act and the heading above it shall be omitted.

(*2*) For the removal of doubt it is hereby declared that nothing in section 639 of the principal Act before its omission by sub-section (*1*) of this section shall be deemed ever to have required the Central Government to prepare, and lay before both Houses of Parliament, any annual report on the working and affairs of a Government company of which the Central Government is not a member.

206. After section 640 of the principal Act, the following heading and section shall be inserted, namely:— Insertion of new heading and new section after section 640.

"Computation of time for filing orders of Court

640A. Except as expressly provided in this behalf elsewhere in this Act, where by any provision of this Act, any order of the Court is required to be filed with the Registrar, or a company or any other person within a period specified therein, then, in computing that period, the time taken in drawing up the order and in obtaining a copy thereof shall be excluded.". Exclusion of time required in obtaining copies of orders of Court.

207. In section 641 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:— Amendment of section 641.

"(*3*) Every alteration made by the Central Government under sub-section (*1*) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.".

208. In section 642 of the principal Act, for sub-sections (*2*) and (*3*), the following sub-sections shall be substituted, namely:— Amendment of section 642.

"(*2*) Any rule made under sub-section (*1*) may provide that a contravention thereof shall be punishable with fine which may extend to five hundred rupees and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which such contravention continues.

(*3*) Every rule made by the Central Government under sub-section (*1*) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in

which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.".

Amendment of section 643.

209. In section 643 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), for the words, brackets and figures "sub-section (*1*) of section 549 and sub-section (*3*) of section 550", the words, brackets and figures "sub-section (*3*) of section 550, section 552 and sub-section (*3*) of section 555" shall be substituted;

(*ii*) in clause (*b*), in sub-clause (*iv*), the words "and the sub-division of the shares of a company" shall be omitted;

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) All rules made by the Central Government under sub-section (*1*) of section 549 and in force immediately before the commencement of the Companies (Amendment) Act, 1960 shall continue in force and be deemed to have been made by the Supreme Court unless and until they are superseded by rules made by the Supreme Court after such commencement.".

Amendment of section 647.

210. In section 647 of the principal Act, the following proviso shall be added at the end, namely:—

"Provided that where the proceedings in any such winding up are pending at the commencement of the Companies (Amendment) Act, 1960,—

(*a*) sections 463, 502, 515 and 524 shall, as far as may be, also apply in relation thereto;

(*b*) the liquidator appointed by the Court and functioning in any such winding up shall in such manner and at such time as may be prescribed by the Central Government, pay the moneys received by him as such liquidator, into the public account of India in the Reserve Bank of India.".

Omission of section 650.

211. Section 650 of the principal Act shall be omitted.

Amendment of Schedule I.

212. In Schedule I to the principal Act, in Table A, in regulation 3, in clauses (*1*) and (2), the word "general" shall be omitted.

Insertion of new Schedule IA.

213. After Schedule I to the principal Act, the following Schedule shall be inserted, namely:—

"SCHEDULE IA

[*See* section 6(c)]

LIST OF RELATIVES

1. Father. ***
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Dauhgter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.

19. Brother (including step-brother).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's hubsand.
23. Husband's father.
24. Husband's mother.

* * *

25. Husband's sister.
26. Wife's father.
27. Wife's mother.

* * *

28. Wife's brother.
29. Wife's sister.
30. Wife's sister's husband.
31. Father's brother.
32. Father's sister.
33. Mother's brother.
34. Mother's sister.
35. Father's brother's wife.
36. Father's sister's hubsand.
37. Mother's brother's wife.
38. Mother's sister's husband.
39. Brother's son.
40. Brother's son's wife.
41. Brother's daughter.
42. Sister's son.
43. Sister's daughter.

* * *

44. Father's brother's son.
45. Father's brother's daughter.
46. Father's sister's son.
47. Father's sister's daughter.
48. Mother's brother's son.
49. Mother's brother's daughter.".

* * * -

Amendment of Schedule VI.

214. In Schedule VI to the principal Act,—

(*a*) for Part I, the following Part shall be substituted, namely:—

'PART I—FORM OF BALANCE-SHEET

Balance-Sheet of.....(Here enter the name of the company)
As at.....(Here enter the date as at which the balance-sheet is made out)

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	
*Terms of redemption or conversion (if any) of any Redeemable Preference Capital to be stated, together with earliest date of redemption or conversion.	*SHARE CAPITAL : Authorised.....shares of Rs.....each. †Issued (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class) shares of Rs...each. †Subscribed (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class.) (c)..... shares of Rs.....each.		*FIXED ASSETS : Distinguishing as far as possible between expenditure upon (a) goodwill, (b) land, (c) buildings, (d) leaseholds, (e) railway sidings, (f) plant and machinery, (g) furniture and fittings, (h) development of property, (i) patents, trade marks and designs, (j) live-stock and (k) vehicles, etc.		*Under each head the original cost, and the additions thereto and deductions therefrom during the year, and the total depreciation written off or provided up to the end of the year to be stated. In case where original cost cannot be ascertained, the valuation shown by the books shall be given and where any of the assets are sold and the original cost in respect thereof is not ascertainable, the amount of the sale proceeds shall be shown as deduction.
Particulars of any option on unissued share capital to be specified.					
† Particulars of the different classes of preference shares to be given.					

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	
	Rs..... called up. Of the above shares,.. shares are allotted as fully paid up pursuant to a contract without payments being received in cash. Of the above shares,.... shares are allotted as fully paid up by way of bonus shares or other shares by way of capitalisation of profits or reserves or/and from share premium account. *Less* : Calls unpaid : (*i*) By managing agents or secretaries and treasurers and where the managing agent or secretaries and treasurers are a firm, by the partners thereof, and where the managing agent or secretaries and treasurers are a private				Where sums have been written off on a reduction of capital or a revaluation of assets, every balance-sheet, (after the first balance-sheet) subsequent to the reduction or revaluation shall show the reduced figures

	company, by the directors or members of that company. (*ii*) By directors. (*iii*) By others. *Add* : Forfeited shares		and with the date of the reduction in place of the original cost. Each balance-sheet for the first five years subsequent to the date of the reduction, shall show also the amount of the reduction made. Similarly, where sums have been added by writing up the assets, every balance-sheet subsequent to such writing up shall show the increased figures with the date of the increase in place of the original cost. Each balance-sheet for the first five years subsequent to the date of writing up shall also show the amount of increase made.
*Additions and deductions since last balance-sheet to be shown, under each of the specified heads. The word "fund" in relation to any "Reserve" should be used only where such Reserve is specifically represented by readily realisable and earmarked assets.	*RESERVES AND SURPLUS : (1) Capital Reserves not available for Dividend. (2) Capital Redemption Reserve. (3) Share Premium Account(cc). (4) Other Reserves specifying the nature of each reserve and the amount in respect thereof. *Less* : Debit balance in Profit and Loss Account (if any). (5) Any other Reserve created out of Net Profit. (6) Surplus that is balance in Profit and Loss Account after providing for proposed allocations, *viz.*,	INVESTMENTS : Showing nature of investments and mode of valuation, for example cost or market value and distinguishing between— *(1) Investments in Government or Trust Securities. *(2) Investments in shares, debentures or bonds (showing separately shares, fully paid up and partly paid up and also distinguishing the different classes of shares	*Aggregate amount of company's quoted investments and also the market value thereof shall be shown. Aggregate amount of company's unquoted investments shall also be shown.

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	
		Dividend, Bonus or Reserves.		and showing also in similar details investments in shares, debentures or bonds of subsidiary companies.	
		(7) Proposed additions to reserves.		(3) Immovable properties.	
		(8) Sinking Funds.			
		SECURED LOANS :		CURRENT ASSETS, LOANS AND ADVANCES :	
*The nature of the security to be specified in each case.		*(1) Debentures†			
		*(2) Loans and Advances from Banks.		(A) Current Assets.	
		*(3) Loans and Advances from subsidiaries.		(1) Interest accrued on Investments.	
Where loans have been guaranteed by managing agents, secretaries and treasurers, managers and/or directors, a mention thereof shall also be made and also the aggregate amount of such loans under each head.		*(4) Other Loans and Advances.		††(2) Stores and Spare Parts.	††Mode of valuation of stock shall be stated and the amount in respect of raw materials shall also be stated separately where practicable.
				††(3) Loose Tools.	
				††(4) Stock-in-trade.	
				††(5) Works in Progress.	**Mode of valuation of works-in-progress shall be stated.
†Terms of redemption or conversion (if any) of debentures issued to be stated together with earliest date of redemption or conversion.				†(6) Sundry Debtors. (*a*) Debts outstanding for a period exceeding six months. (*b*) Other debts. *Less* : Reserve.	†In regard to Sundry Debtors particulars to be given separately of—(a) debts considered good and in respect of which the company is fully secured;
				†(7) Cash and bank balances.	

			and (b) debts considered good for which the company holds no security other than the debtor's personal security; and (c) debts considered doubtful or bad.
			Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member to be separately stated.
			Debts due from other companies under the same management to be disclosed with the names of the companies (*vide* section 370).
			The maximum amount due by directors or other officers of the company at any time during the year to be shown by way of a note.
			The Reserves to be shown under this head should not exceed the amount of debts stated to be considered doubtful or bad and any surplus of such Reserves, if already created, should be shown at every closing under "Reserves and Surplus" (in the Liabilities side) under a separate sub-head "Reserve for Doubtful or Bad Debts".

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	†The balances lying with bankers on current accounts, call accounts and deposit accounts shall be shown separately.
	UNSECURED LOANS :				
†Where loans have been guaranteed by managing agents, secretaries, and treasurers, managers, and/or directors, a mention thereof shall also be made and also the aggregate amount of such loans under each head.	(1) Fixed Deposits.				
	†(2) Loans and Advances from subsidiaries.				
	†*(3) Short Term Loans and Advances :				
	(*a*) From Banks.				
	(*b*) From others.				
	†(4) Other Loans and Advances :				
	(*a*) From Banks.				
	(*b*) From others.				
*See note (*d*) at foot of Form.	CURRENT LIABILITIES AND PROVISIONS :				
	A. Current Liabilities.				
	(1) Acceptances.				
	(2) Sundry Creditors.				
	(3) Subsidiary Companies.		†(B). Loans and Advances.		
	(4) Provision for Taxation.				
	(5) Proposed Dividends.		(8) Advances and Loans to		

(6) Advance Payments and Unexpired Discounts for the portion for which value has still to be given, *e.g.*, in the case of the following classes of companies :
(Newspaper, Fire Insurance, Theatre, Clubs, Banking, Steamship Companies, etc.)

(7) Unclaimed Dividends.
(8) Other Liabilities (if any).
(9) Interest accrued and accruing on secured loans.
(10) Interest accrued and accruing on unsecured loans.

B. Provisions.

(11) For contingencies.
(12) For Provident Fund scheme.
(13) For insurance, pension and similar staff benefits schemes.
(14) Other provisions.

subsidiaries.
(9) Bills of Exchange.
(10) Advances recoverable in cash or in kind or for value to be received, *e.g.*, Rates, Taxes, Insurance, etc.
(11) Balances on current account with Managing Agents or Secretaries and Treasurers.
(12) Balances with Customs, Port Trust, etc. (where payable on demand).

†The above instructions regarding "Sundry Debtors" apply to "Loans and Advances" also.

††The period for which the dividends are in arrear or if there is more than one class of shares, the dividends on each such class are in arrear, shall be stated.

The amount shall be stated before deduction of Income-tax, except that foot-note to the balance-sheet may be added to show separately :—

(1) Claims against the company not acknowledged as debts.
(2) Uncalled liability on shares partly paid.

††(3) Arrears of fixed cumulative dividends.
(4) Estimated amount of contracts remaining to be executed on capital account and not provided for

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
in the case of tax free dividends the amount shall be shown free of income-tax and the fact that it is so shown shall be stated. ††The amount of any ††guarantees given by the company on behalf of directors or other officers of the company shall be stated and where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified.	Rs. (*b*) †(5) Other money for which the †††company is contingently liable.]		Rs. (*b*) MISCELLANEOUS EXPENDITURE (to the extent not written off) : (1) Preliminary expenses. (2) Expenses including commission or brokerage on underwriting or subscription of shares or debentures. (3) Discount allowed on the issue of shares or debentures. (4) Interest paid out of capital during construction (also stating the rate of interest). (5) Development expenditure not adjusted. (6) Other items (specifying nature). PROFIT AND LOSS ACCOUNT Loss brought forward, *Less* : Reserves set off.		

NOTES

General instructions for perparation of balance-sheet.—(*a*) The information required to be given under any of the items or sub-items in this Form, if it cannot be conveniently included in the balance-sheet itself, shall be furnished in a separate Schedule or Schedules to be annexed to and to form part of the balance-sheet. This is recommended when items are numerous.

(*b*) *Naye Paise* can also be given in addition to Rupees, if desired.

(*c*) In the case of subsidiary companies, etc., the number of shares held by the holding company as well as by the ultimate holding company and its subsidiaries must be separately stated.

The auditor is not required to certify the correctness of such share-holdings as certified by the management.

(*cc*) The item "Share Premium Account" shall include full details of its utilization in the manner provided in section 78.

(*d*) Short Term Loans will include those which are due for not more than one year as at the date of the balance-sheet.

(*e*) Depreciation written off or provided shall be allocated under the different asset heads and deducted in arriving at the value of Fixed Assets.

(*f*) Dividends declared by subsidiary companies after the date of the balance-sheet cannot be included unless they are in respect of period which closed on or before the date of the balance-sheet.

(*g*) Any reference to benefits expected from contracts to the extent not executed shall not be made in the balance-sheet but shall be made in the Board's report.

(*h*) The debit balance in the Profit and Loss Account shall be set off against the General Reserve, if any.

(*i*) As regards Loans and Advances, amounts due by the Managing Agents or Secretaries and Treasurers, either severally or jointly with any other persons, to be separately stated ; the amounts due from other companies under the same management should also be given with the names of the companies *vide* section 370; the maximum amount due from every one of these at any time during the year must be shown.

(*j*) Particulars of any redeemed debentures which the company has power to issue should be given.

(*k*) Where any of the company's debentures are held by a nominee or a trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

(*l*) A statement of investments (whether shown under "Investments" or under "Current Assets" as stock-in-trade) separately classifying trade investments and other investments should be annexed to the balance-sheet showing the names of the bodies corporate, indicating separately the names of the bodies corporate in the same group (with the name of the managing agent or secretaries and treasurers, if any, of every body corporate) in whose shares or debentures investments have been made (including all investments whether existing or not, made subsequent to the date as at which the previous balance-sheet was made out) and the nature and extent of the investments so made in each such body corporate; provided that in the case of an investment company, that is to say, a company whose principal business is the acquisition of shares, stock, debentures or other securities, it shall be sufficient if the statement shows only the investments existing on the date as at which the balance-sheet has been made out; provided further that it shall not be necessary to give any particulars in respect of investments made by a managing agency or secretaries and treasurers company in the managed companies' shares or debentures.

A "Trade Investment" means an investment by a company in the shares or debentures of another company, not being its subsidiary, for the purpose of promoting the trade or business of the first company.

(*m*) If, in the opinion of the Board, any of the current assets have not a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion shall be stated.

(*n*) Except in the case of the first balance-sheet laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the balance-sheet shall be also given in the balance-sheet. The requirement in this behalf shall in the case of companies preparing quarterly or half-yearly accounts, etc., relate to the balance-sheet for the corresponding date in the previous year.

(*o*) The amounts to be shown under Sundry Debtors shall include the amounts due in respect of goods sold or services rendered or in respect of other contractual obligations but shall not include the amounts which are in the nature of loans or advances.

(*p*) Advances by Directors, Managing Agents, Secretaries and Treasurers, Managers as also balances on current account with them whether they are in credit or debit shall be shown separately." ;

(*b*) in Part II,—

(*i*) in paragraph 3,—

(*1*) in sub-paragraph (*iii*), for the words "works remained to be executed", the words "such works have been completed" shall be substituted;

(*2*) in sub-paragraph (*v*), for the word "payable", the words "paid or payable" shall be substituted;

* * * *

(*3*) in sub-paragraph (*x*), in item (*f*) (*3*), the following words shall be added at the end, namely:—

"to the extent not adjusted from any previous provision or reserve.

Note.—Information in respect of this item should also be given in the balance-sheet under the relevant provision or reserve account.";

(*4*) in sub-paragraph (*xii*) (*a*), the following words shall be added at the end, namely:—

"to the extent not adjusted from any previous provision or reserve.

Note.—Information in respect of this item should also be given in the balance-sheet under the relevant provision or reserve account.";

(*ii*) for paragraph 4, the following paragraphs shall be substituted, namely:—

"4. The profit and loss account shall also contain or give by way of a note detailed information in regard to the following payments received during the financial year by the directors (including managing directors), the managing agent, secretaries and treasurers or manager, if any, from the company, the subsidiaries of the company***:—

(*i*) managerial remuneration, that is to say, amounts paid during the financial year to the directors (including managing directors), the managing agent, secretaries and treasurers or manager, if any;

(*ii*) expenses reimbursed to the managing agent under section 354;

(*iii*) commission or other remuneration payable separately to a managing agent or his associate under sections 356, 357 and 358;

(*iv*) commission received by the managing agent as buying or selling agent of other concerns under section 359;

(*v*) the money value of the contracts for the sale or purchase of goods and materials or supply of services, entered into by the company with the managing agent or his associate under section 360 during the financial year;

(*vi*) other allowances (details to be given);

(*vii*) any other perquisites or benefits in cash or in kind (stating approximate money value where practicable);

(*viii*) pensions, etc.,—

(*a*) pensions,

(*b*) gratuities,

(*c*) payments from provident funds, in excess of own subscriptions and interest thereon,

(*d*) compensation for loss of office,

(*e*) consideration in connection with retirement from office.

4A. The profit and loss account shall further contain or give by way of a note detailed information in regard to amounts paid to the auditor, whether as fees, **or otherwise for services rendered—

(*a*) as auditor; and

(*b*) in any other capacity.".

Amendment of Schedule VII.

215. In Schedule VII to the principal Act, clause (*l*) shall be omitted.

M. N. KAUL,
Secretary.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1960.